SUPREME COURT OF THE UNITED STATES.

No. 203

CHARLES FITZ, LIBELLANT AND APPELLANT,

vs.

THE GALLIOT AMELIE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 295.

CHARLES FITZ, LIBELLANT AND APPELLANT,

vs.

THE GALIOT AMELIE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *Massachusetts district, ss:*

At a circuit court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, before the honorable Nathan Clifford, associate justice, and the honorable John Lowell, district judge.

CHARLES FITZ, libellant,
versus
THE GALIOT AMELIE.

The appeal in this cause was entered in this court on the sixteenth day of May, A. D. 1864, and the copy of the record thereof in the district court is as follows, viz:

2 UNITED STATES OF AMERICA, *Massachusetts district, ss:*

At a special district court of the United States holden at Boston, within and for the district of Massachusetts, on Friday, the fourth day of March, in the year of our Lord one thousand eight hundred and sixty-four, before the honorable Peleg Sprague, judge.

CHARLES FITZ, libellant,
versus
THE GALIOT AMELIE.

This libel was filed in court on the twenty-second day of September, A. D. 1862, and is as follows, viz:

To the honorable Peleg Sprague, judge of the district court of the United States for the district of Massachusetts:

The libel and complaint of Charles Fitz, of Gloucester, in said district, merchant, against a vessel or galiot called the Amelie, and formerly called the Plata, now lying in the port of Boston in said district, her tackle, apparel, and furniture, in a cause of contract, civil and maritime, and thereupon your libellant alleges as follows:

3 First. That on the thirteenth day of March last past, the said vessel, then called the Plata, was lying in the port of Paramaribo in the West Indies, bound for Boston, and your libellant then and there caused to be shipped on board thereof two hundred and forty-two hogsheads, three tierces and sixteen barrels of molasses, fifty hogsheads and nine barrels of sugar, and sixteen pieces of old copper, to be carried and delivered at said Boston, the dangers of the seas only excepted, unto the libellant, on payment of freight in the charter party provided, as appears by the bills of lading thereof, signed by the master, hereto annexed.

Second. That the said vessel sailed on said voyage on the sixteenth of March, A. D. 1862, and that afterwards, as your libellant is informed, she experienced bad weather and suffered damage from perils

of the seas, and became leaky, in consequence of which it was ad-
judged necessary for the common safety to jettison a part of the cargo,
and that thirty casks of molasses and some other parts of the
4 cargo, the exact amount of which is unknown to your libellant,
and the same were then thrown overboard, and the vessel re-
lieved thereby, and the rest of the cargo preserved; and, afterwards,
said vessel put into Port au Prince in Hayti, for repairs.

Third. That at said Port au Prince the master of said vessel sold a part of said goods, on the pretence that they were damaged, and received the proceeds thereof, and afterwards sold other parts on pretence of needing money to make repairs, which said sales were made at a great sacrifice, and your libellant, not admitting that such sales were necessary or justifiable, insists that if they were, the loss sustained thereby was for the common benefit of the vessel and cargo, and that they should contribute to make the same good.

Fourth. That by reason of the premises your libellant, as consignee
of said goods, is entitled to a contribution from the said vessel
5 to indemnify him against the losses and sacrifices so suffered
and sustained, and that he has a lien upon the said vessel for
its contributory portion thereof, and that the same is owned in foreign
ports and is about to be withdrawn from within the jurisdiction of
this hon. court.

SECOND COUNT.

6 First. That on the thirteenth day of March last said vessel.
then called the Plata, was lying in the port of Paramaribo, in
the West Indies, bound for Boston; and your libellant then and there
caused to be shipped on board thereof two hundred and forty-three
hogsheads, three tierces, sixteen barrels of molasses, fifty hogsheads
and nine barrels of sugar, and sixteen pieces of old copper, in good
order and condition, and to be carried and delivered in like
7 order and condition to your libellant at Boston aforesaid, the
perils of the seas only excepted, as appears by the bills of
lading hereto annexed; and that by reason of the said contract the
said vessel, as well as the owners and master thereof, became bound
for the safe delivery thereof, the perils of the seas only excepted.

Second. That the said vessel set sail and departed on said voyage on the sixteenth day of March last, and afterwards arrived at said Boston; and though not prevented by the perils of the seas, the said goods have not been delivered to your libellant in Boston, but only a part thereof, to wit, one hundred and seventy-nine hogsheads, thirteen barrels, and one tierce of molasses, and that the residue thereof has not been delivered; and that the master of said vessel has rendered no satisfactory account thereof, nor of the proceeds of some parts alleged to have been sold by him.

That by reason of the premises your libellant has sustained damage to the amount of six thousand dollars.

That all and singular the premises are true, and within the jurisdiction of this honorable court; in verification whereof, if desired, this libellant refers to the depositions and other proofs to be by him exhibited.

Wherefore the libellant prays that process may issue against the said vessel formerly called the Plata, now called the Amelie, her tackle, apparel, and furniture, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer to the premises, and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellant as it shall deem meet, and to condemn the said vessel and all persons intervening for their interest therein in costs.

CHARLES FITZ.

F. C. Loring, *Proctor*.

District of Massachusetts, Boston, September 22, 1862.

Subscribed and sworn to before me.

C. W. LORING,
U. S. Comm. Circuit Ct, Dist. of Mass.

8 Shipped in good order and condition, by D. M., on board the good koff called the Plata, whereof W. Meyer is master for the present voyage, now lying in the port of Paramaribo and bound for Boston, to say: 194 hhds., 3 tierces, 16 bbls. molasses, 40 hhds. sugar, 16 p's old copper, $1,800, being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the aforesaid port of Boston, (the dangers of the seas only excepted,) unto Charles Fitz or his assigns, he paying freight for the said merchandise as per charter party, without primage and average accustomed.

In witness whereof, the master of said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which bills being accomplished, the others to stand void.

Dated at Paramaribo, the 13th day of March, 1862.

W. MEYER.

9 Shipped in good order and condition, by F. E. Bixby, on board the good koff called the Plata, whereof W. Meyer is master for the present voyage, now lying in the port of Paramaribo, and bound for Boston, to say: 10 hhd. sugar, 9 bbls. sugar, 52 hhd. molasses, being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the aforesaid port of Boston, (the dangers of the seas only excepted,) unto Charles Fitz or his assigns, he paying freight for the said merchandise three hundred and fifty dollars, without primage and average accustomed.

PP—D49. A 49. B a 52 — 2 hhds. molasses in dispute.

In witness whereof, the master of said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which bills being accomplished, the others to stand void.

Dated at Paramaribo, the 13th day of March, 1862.

W. MEYER.

10 *Warrant and monition.*

Thereupon, to wit, on the twenty-second day of September, A. D. 1862, by order of the judge, a warrant and monition issued, commanding the marshal to give notice to all persons concerned that the foregoing libel had been filed, and that trial would be had thereon at a special district court to be holden at the United States court-house in Boston, in said district of Massachusetts, on Friday, the third day of October then next coming, at ten o'clock a. m.; and to give said notice by advertising the same in the Boston Daily Advertiser, one of the public newspapers printed at Boston, and by posting a copy of the same notice at the said court-house, in Boston, ten days at least before said day of trial; and to take the said vessel and appurtenances into his custody, and to make due return of his doings herein.

And the said marshal made return thereon as follows

11 U. S. OF AMERICA, *Mass. dist.*, *ss:*

BOSTON, *Sept.* 30, 1862.

Pursuant hereunto I have given notice to all persons concerned that the libel within named had been filed, and that trial will be had thereon on the 3d day of October next, by publishing the substance of the within monition in the Boston Daily Advertiser, a newspaper printed in Boston, in said district, and by posting up a copy of the same notice in the U. S. court-house in said Boston ten days at least before the day within named for trial. And on the 22d day of said September took the galiot Amelie, her tackle, apparel, and furniture into my custody on this warrant.

J. S. KEYES, *U. S. Marshal.*

Petition for sale.—Filed in court November 28th, 1862.

To the Hon. Peleg Sprague, judge of the district of the
12 United States for the district of Massachusetts:

Respectfully shows Charles Fitz: That in the month of September last he filed a libel against a vessel called the Amelie, whereon it was arrested and taken into the custody of this hon. court, and now is; that the owner of said vessel has not given bail therefor, and, as your petitioner is advised, there is no person here authorized to do so or to consent to a sale; that the expenses of keeping said vessel in custody are large; that the vessel is daily depreciating in value, especially by reason of her being under repair at the time of arrest, and the repairs being stopped thereby and not completed; that said vessel, as your petioner is informed, is in such condition as to require more than the usual care, and that it would be for the interest of all concerned that it should be sold; that the consignee of said vessel has been requested to consent to a sale, but though expressing the opinion
that a sale is expedient, does not feel authorized to consent
13 thereto. Wherefore your petitioner prays that a sale may be
ordered.

CHARLES FITZ, by his Proctor,
F. C. LORING.

District of Massachusetts, *Nov.* 29, 1682.

I hereby declare that I am informed and believe that the facts stated in the within-written petition are true, and that I have more knowledge concerning the same than the libellant therein named.

F. C. LORING.

Sworn to before me. C. W. LORING,
U. S. Com'r Circ't C't, Dist. of Mass'tts.

I acknowledge notice of this petition.

C. W. LORING, *Proctor for Cl't.*

Boston, *Nov.* 29, 1862.

I certify that the facts set forth in the foregoing petition are true, and that in my opinion the interests of all parties require an immediate sale of the galiot within named.

JOHN S. KEYES, *U. S. Marshal.*

14 *Warrant for sale of galiot Amelie.*

Thereupon, by order of the judge, on the first day of December, A. D. 1862, a warrant issued ordering same to be sold at public auction, and commanding the marshal of this district to sell to the highest bidder, at public auction, at Boston, on the ninth day of December, inst., at twelve o'clock, noon, the said galiot, her tackle, apparel, and furniture, first giving six days' notice, at least, of the time and place of sale, by advertising the same in the Boston Daily Advertiser and Boston Courier, two of the newspapers printed at Boston, and by proclamation of the town crier, in the usual form, on the day of sale, the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs; and to make due return of his doings.

15 And the marshal made return, as follows, vide.:

United States of America, *District of Massachusetts:*

Boston, *December* 10*th*, 1862.

Pursuant to this precept I have caused the galiot Amelie within named to be sold by public auction, and to the highest bidder, at Boston, on the day, hour, and place therein directed, having given six days' previous notice of the time, place, and manner of the sale in the Boston Daily Advertiser and the Boston Courier, two of the newspapers printed in Boston, and by the town crier, on the day of sale, and at such sale the purchasers were as under:

James Burr		$2,475 00
Travel, 12 c.; Bo., 60 c.; crier, $1	1 72	
Advertising $10; keeper, $197 50	207 50	
Dockage, $43 45; fuel and labor, and drying sails $6 50	49 95	
Bill of sale, $5; auctioneer, $35.	40 00	
Commissions, at 1¼ and 2½ per. ct	37 19	
		336 36
		2,138 64

16 Whereby the net sales amounted to twenty-one hundred thirty-eight dollars 64 cents, which I pay over to S. E. Sprague, the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: J. S. KEYES, *Marshal.*

Received from J. S. Keyes, marshal, twenty-one hundred thirty-eight dollars 64 cents, being (as he saith) the proceeds of the foregoing sale, the moneys to be disposed of as the court directs, and for which I have signed receipts.

Boston, March, 1864.

S. E. SPRAGUE, *Clerk.*

Consent as to stipulation.—Galiot Amelie.—Filed in court January 8, 1863.

In the case Fitz *v.* Amelie, it is agreed that the claim of N. P. Mann & Co. may be entered upon the personal stipulation of said Mann, and that of Ladd and *als.* without any stipulation.

17 F. C. LORING,
Proctor for Libellants.

Stipulation for costs and expenses, by N. P. Mann & Co.

On the fifth day of January, A. D. 1863, appeared N. P. Mann & Company, of Boston, in the district of Massachusetts, by N. P. Mann. And the said N. P. Mann & Company, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars unto the said libellant, that the said N. P. Mann & Company should pay all costs and expenses which should be awarded against them in this suit upon the final adjudication thereof, or by any interlocutory order whether it be in this or any appellate court.

18 *Claim of Joseph Ladd et als.—Filed in court Feb.* 25, 1864.

To the honorable Peleg Sprague, judge of the district court of the United States for the district of Massachusetts:

The several answers and claims of Joseph Ladd and Joseph L. Piper, of Boston, shipwrights and calkers, copartners; of John Cushing, of said Boston, mast-maker; of G. W. Bartley, of said Boston, rigger; and of John Hathaway, shipwright, of said Boston—intervening for their respective interests, to the libel of Charles Fitz against the galiot Amelie, severally, allege as follows:

First. That as to the facts as alleged in said libel, the said claimants neither admit nor deny the same, but leave the same to be duly proved to the satisfaction of this court.

Second. That at various times during the year eighteen hundred and sixty-two the said vessel was lying in the port of Boston, then under the command of C. H. Lorentzen, and standing in need of repairs to enable her to perform her intended voyage, and the said claimants at the request of said master did severally furnish to the said vessel repairs to the several amounts as follows: The said Ladd & Piper to the amount of forty-five and $\frac{89}{100}$ dollars; the said John

Cushing to the amount of thirty-seven dollars; the said G. W. Bartley to the amount of thirty-eight and $\frac{74}{100}$ dollars; the said John Hathaway to the amount of twenty-two and $\frac{76}{100}$ dollars. And the several bills of said claimants are hereto annexed; and the said repairs were necessarily furnished on the credit of the said vessel, as the master and owners had no personal credit; and said charges for said repairs are just and reasonable, and the value thereof is by, the maritime law, a lien on said vessel, her tackle, apparel, and furniture.

19 Third. That the said claimants severally have repeatedly requested the said master and Messrs. N. P. Mann & Co., consignees of said vessel, to pay them the sums of money due them as aforesaid, but said master and consignees have hitherto neglected and refused to pay the same, and still neglect and refuse so to do. And the said sums are still unpaid and due the said claimants, respectively.

And the said claimants severally pray that payment of their several bills aforesaid may be adjudged and decreed to be paid out of the proceeds of the sale of said vessel; or that such other order or decree may be made in relation to the same as this court shall deem proper.

G. W. BARTLEY.
JOHN CUSHING.
JOSEPH L. PIPER,
Of firm of Ladd & Piper.
JOHN HATHAWAY.

C. W. LORING, *Proctor.*

Sworn to by G. W. Bartley, John Cushing, Joseph L. Piper and John Hathaway, before me.

C. W. LORING,
U. S. Com'r, for Dist. of Massachusetts.

20 BOSTON, *Dec*, 10*th*, 1862.

Brig Amelie and Owners to John Hathaway, Dr.

Sept. 19.	To 3 hours clearing] top, at 30	$ 0	90
Sept. 20.	To 5 hours clearing mast, at 30	1	50
	To trucking iron-work to shop		25
	To 12 lbs. screw-bolts to top, at 12	1	44
Sept. 22.	To 11 lbs. bolts to trusstrees, at 7		77
	To 5 hours strapping lap, at 30	1	50
	To 7 lbs. bolts in lap, at 7		44
	To 5 lbs. eye-bolts in lap, at 12		60
	To 9 hours on mast bands, at 30	2	70
	To 18 lbs. bolts to mast, at 7	1	26
	To 8 lbs. spikes to mast, at 7		56
	2 lbs. batten nails, at 10		20
	8 lbs. screw-bolts to band, at 12		96
Sept. 23.	To 9 lbs. screw eye-bolts to top, at 12	1	08
	To 6 hours ironing mast, at 30	1	80
	To trucking iron work to Charlestown,		50
	To 3 lbs. iron work to top, at 12		36
	To 4 dog nails, at 2		08

Sept. 23.	To 8 clinch rings, at 2	$0 16
Sept. 24.	To 12 spring keys, at 4	48
	To 24½ lbs. joint band to mast, at 12	2 94
	To one spring key to truss-bolt	10
	To repairing sling staple to top,	87
	To 18 lbs. spikes, at 7	1 26
		22 76

Rec'd Payment.

21 East Boston, *Dec* 3, 1862.

Galiot "Amelie" and Owners to Ladd & Piper, Dr., shipwrights and calkers, foot of Sumner street, East Boston.

To 6½ days carpentering	$16 25
To 2 days calking	6 00
To commission on labor	2 22
To 154 feet oak	9 24
To 189 feet birch	7 56
To oakum and pitch	1 50
To 8 lbs. spikes	56
To wedges	56
To use of blocks	2 00
	45 89

Received payment.

22 East Boston, *Sept.* 23, 1864.

Brig "Amelie" and Owners to G. W. Bartley, Dr., rigger, loft Aspinwall's wharf, foot of Sumner street, East Boston.

	To labor taking out foremost and refitting rigging	
Sept. 18.	To 5 days 2½ hours, at 2 50	$13 12
19.	To 3 hours, at 25	75
22.	To 4 days 2½ hours, at 2 50	10 62
23.	To 4 days 5 hours, at 2 50	11 25
	To use of blocks and falls	3 00
		38 74

Received payment.

Boston, *Sept.* 18, 1862.

Galiot "Amelie" and Owners to John Cushing, Dr.

For work on foremast	$5 00
For one new supporter	6 00
For new cap	6 00
For new trusstrees	10 00
For repairing top	5 00
For carting and towing	5 00
	37 00

Received payment.

23 *Claim of Nehemiah P. Mann et als.—Filed in court February 25, 1864.*

To the honorable Peleg Sprague, judge of the district court of the United States for the district of Massachusetts :

The answer and claim of Nehemiah P. Mann, A. J. Mann, and N. P. Mann, jr., of Boston, in said district of Massachusetts, merchants and copartners, intervening for their interest, to the libel of Charles Fitz against the galiot Amelie, alleges as follows :

First. That as to the facts as alleged and set forth in said libel, the said claimants neither admit nor deny the same, but leave the same to be duly proved to the satisfaction of this court.

Second. That said vessel, during the month of September, A. D. 1862, arrived at the port of Boston aforesaid from Port au Prince, on the island of Hayti, and was consigned to the claimants by B. Riviere, of said Port au Prince, whom the claimants understood and believed to be the owner of said vessel.

Third. That the claimants accepted said consignment, and accordingly took charge of said vessel, and proceeded to execute their duties relating thereto.

Fourth. That said claimants, while acting as consignees as aforesaid, at various times were obliged to make large advances to and for the said vessel to enable her to complete her voyage, and paid large sums for port and custom-house dues, and paid large sums to the seamen employed on board of said vessel for wages, and made other advances, more particularly set forth in the schedule hereto annexed, amounting in the whole to six hundred and forty-seven and eight one-hundredth dollars.

Fifth. That the said advances were necessary to enable the said vessel to complete and prosecute her intended voyages, and were made in a port where the owner did not reside, and where the vessel did not belong, and were necessarily made on the credit of said vessel, as the supposed owner thereof had no personal credit, and were to pay charges and demands which were at the time a lien on
24 said vessel, and by payment thereof the claimants became in
law subrogated in place of the parties to whom they made such payments, and became entitled to hold and prosecute and enforce the lien of said demands for their own reimbursement.

Sixth. That there is now due the claimants the sum of six hundred and forty-seven and eight one-hundredth dollars. And these claimants pray that the sums herein alleged to be due them may be adjudged and decreed to be paid them from the proceeds of the sale of said vessel, her tackle, apparel, and furniture—said sale having been ordered by this court by reason of the great expense of keeping said vessel under attachment—and being now in the hands of the U. S. marshal for said district, subject to the claims thereon; or that such other order or decree may be made in relation to the same as this court shall deem proper.

N. P. MANN,
Of and for the firm of N. P. Mann & Co.

C. W. LORING, *Proctor.*

DISTRICT OF MASSACHUSETTS :

Sworn to before me by N. P. Mann, Dec. 26, 1862.

C. W. LORING, *U. S. Commissioner.*

25 BOSTON, 1862.

Brig "Amelie" and Owners to N. P. Mann & Co., Dr.

1862.			
Sept. 12.	To cash paid custom-house entry fees	$6	17
	To cash paid tonnage dues	175	00
	To cash paid C. H. Lorentzen, master, on ac't,	10	00
	To cash paid ins. on freight, $1,000, valued from Port au Prince to Boston	31	00
	To cash paid mates', sailors' and cook's wages, in full	269	77
15.	To cash paid quarantine fees	3	00
	To cash paid I. Low, inward pilot	15	86
17.	To cash paid Commonwealth exp. on passengers,	26	31
23.	To cash paid st. towboat Despatch, towage	5	00
	To cash paid J. Lawson, shipkeeper	15	75
	To cash paid C. H. Lorentzen, master, on acc't,	17	00
	To cash paid dockage	3	00
	To cash paid T. Cotton, discharging vessel	43	00
	To cash paid Whiton, Bros. & Co., bill cordage, &c.	10	45
		631	31
	Commission on 631 31, at $2\frac{1}{2}$	15	77
		647	08

26 *Claim and Answer of B. Riviere.—Filed in court February* 25, 1864.

To the honorable Peleg Sprague, judge of the district court of the United States for the district of Massachusetts :

The claim and answer of B. Riviere, of Port au Prince, owner of the galiot Amelie, formerly called the Plata, her tackle, apparel, and furniture, to the libel of Charles Fitz, alleges as follows :

First. That said Riviere, as owner, claims the said galiot, her tackle, apparel, and furniture, and further alleges and answers as follows :

Second. That he is informed and believes, and therefore admits, that said galiot did sail from the port of Paramaribo, meet with disasters from the perils of the seas, and put into the port of Port au Prince, as is alleged in said libel. But as to all and singular the other matters set forth in the said libel and in both counts thereof, he is entirely ignorant of them, and neither admits nor denies the same, but leaves the same to be duly proved to the satisfaction of this court.

Third. That after said galiot arrived at Port au Prince, as aforesaid, she was unseaworthy and utterly unfit and unable to proceed on her voyage, or on any voyage to sea; that very costly and extensive repairs were necessary to said galiot before she could be rendered seaworthy; that the master nor owners of said galiot had funds or credit at Port au Prince wherewith to procure said repairs to be made; that the master was not able to procure funds by bottomry bond, and that a sale of the cargo, or the necessary part thereof to complete the said repairs, would not have been justified, by reason of the great sacrifice which would have attended the same.

That the master of said galiot thereupon caused the said galiot to be advertised for sale at public auction where she then lay. That sale took place on the twelfth day of June, A. D. 1862, and said galiot was then and there struck off and sold to this claimant
27 and respondent for the sum of four hundred and seven dollars
in gold, he being the highest bidder therefor. And said sale and purchase were conducted and made in good faith, and said sum of money was the full value of said galiot in her then condition, and was duly paid by this claimant to said master, for the benefit of whom it may concern; whereby said claimant became the true and lawful owner of said galiot, free of all claims and demands of all persons, and acquired a title good and valid against all former claimants.

Fourth. That after said claimant purchased said galiot as aforesaid, he caused large sums of money to be expended on it in repairs and outfits necessary to render it seaworthy and fit to prosecute its said intended voyage, namely, the sum of sixteen hundred and ninety-five and thirty one-hundredth dollars in gold, exclusive of sums expended for stores, and two hundred Spanish dollars for naturalization of the ship; to which sums so expended the present value of said galiot as a sea-going vessel is altogether due, and without the expenditure of said sums in said repairs and outfits, said galiot could not have proceeded on its voyage and delivered its cargo.

Fifth. That, if the claim of said libellant be a lien on said galiot as alleged in said libel, this claimant further alleges that the sums so expended by him as aforesaid in repairs and outfits constitute a lien on said galiot prior in right to said claim of said libellant, and the same ought to be satisfied and discharged out of the procedes of said vessel in precedence of the claim of said libellant. And said claimant further claims said galiot in virtue and by reason of his said lien.

And this claimant prays that the proceeds of the sale of said galiot, her tackle, apparel, and furniture, may be adjudged and decreed to be paid to him; or that such other order or decree may be made in relation thereto as this court shall deem proper.

N. P. MANN, *for B. Riviere.*

C. W. LORING, *Proctor.*

DISTRICT OF MASSACHUSETTS:

Sworn to before me, December 26, 1862.

C. W. LORING, *U. S. Commissioner.*

28 This libel was entered at a special district court held on the twenty-second day of September, A. D. 1862, and thence was continued from time to time to this fourth day of March, A. D. 1864; and now, after a full hearing of the case, upon the facts proved, and arguments of counsel, and mature deliberation thereon had, this court doth order, adjudge, and decree that the said libel do stand dismissed with costs for claimants.

29 *Agreement to extend time for appeal.—Filed in court March* 15, 1864.

U. S. district court.

The Amelie, Fitz, libellant:

The time for claiming an appeal is extended until the stipulation of the cl't is filed.

C. W. LORING, *Proctor for Cl't.*
F. C. LORING, *Proctor for Lib't.*

Stipulation for costs and expenses.

On the fifteenth day of March, A. D. 1864, before this court then appeared B. Riviere, of Port au Prince, claimant of the said galiot Amelie, who appears by Edwin M. Fowle, of Newton, Mass., doing business in Boston as his agent, and produced for surety said Fowle. And the said Riviere, by his said agent and said Fowle as surety, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars unto the said libellant 30 that the said Riviere should pay all costs and expenses which should be awarded against him in this suit upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

Prayer for appeal.—Filed in court March 15th, 1864.

United States district court, Massachusetts district.

The Amelie, Charles Fitz, libellant:

And now the said libellant claims an appeal from the decree dismissing his libel.

F. C. LORING, *Proctor*.

March 15, 1864.—Said appeal was allowed by the court.

UNITED STATES OF AMERICA, *Massachusetts district, ss:*

I, S. E. Sprague, clerk of the district court of the United 31 States for this district, hereby certify that the foregoing is a true copy from the records of said court.

In witness whereof, I have hereto signed my name and affixed the seal of this court, at Boston, this twenty-sixth day of March, A. D. one thousand eight hundred and sixty-four.

[L. S.] Attest: S. E. SPRAGUE, *Clerk.*

32 The following testimony produced in the district court was duly transmitted to this circuit court, and was used at the hearing of said cause in this court:

Facts agreed.

CHARLES FITZ, libellant,
v.
THE GALIOT AMELIE.

March 13, 1862.—The vessel then called the Plata was at Surinam, and there received on board 242 hogsheads and 16 barrels of molasses, 50 hogsheads and 9 barrels of sugar, and 16 pieces old copper, to be carried and delivered to the libellant at Boston, of the invoice value of 20,766.68 guilders, ($8,306 67,) for which the master signed bills of lading in the usual form, which may be referred to.

After sailing, the vessel suffered damage by perils of the seas, and for the common safety 30 hogsheads of molasses were jettisoned, 30 more were intentionally stove in the hold and the contents pumped out, and there was evidence that some of the cargo was damaged by a peril of the sea, and the vessel put into Port au Prince for repairs.

She was then surveyed and ordered to be repaired, and repairs were commenced.

After repairs had been made to the amount of about $1,000 it was ascertained, as is alleged, that more repairs would be required than were at first deemed necessary, whereupon another survey was called, the report of which states that much more extensive repairs were necessary; that materials and mechanics could not be procured, and that it was impossible to make the repairs; that if men could be had, the cost in addition to the amount already expended would be $3,500, Spanish, and the total cost more than the value of the vessel, and that it would be for the interest of all that the vessel be sold and the cargo transhipped. The vessel was then sold June 12, and purchased by the claimant, Riviere, for the sum of $407 in gold. He caused her to be repaired at an expense of about $1,695 31 in gold, her name to be changed to Amelie, and despatched her to Boston with a cargo, on the day of , where she arrived in September.

33 The master had previously sold at Port au Prince all the remaining cargo shipped at Surinam except 179 hogsheads, 13 barrels, and 1 tierce of molasses, which were shipped by another vessel, and arrived, and were delivered to the libellant. No account has been rendered by the master of the proceeds of the cargo sold by him--$2,441 84.

The vessel was consigned by said Riviere to N. P. Mann & Co., his correspondents here, who received the cargo belonging to him, sold it, and received the proceeds. They claim a lien on the proceeds of said vessel for sundry disbursements, as set forth in the schedule annexed to their claim, in preference to the libellant.

Joseph Ladd and others, material men, have also filed their claim for work done on the vessel since her arrival in Boston, alleging that it was done on the credit of the vessel.

The said Riviere has also filed a claim, insisting that he purchased the vessel in good faith, and that he holds her free of all liens in favor of the libellant ; or that if he has any, the said Riviere has a prior claim for the cost of the repairs put upon said vessel at Port au Prince.

This libel was filed soon after the arrival of the vessel in Boston, asserting a lien for so much of the cargo as was sacrificed for the common benefit ; also a lien for the value of so much of the cargo as has not been delivered.

The vessel has been sold by order of court, and the proceeds are now in the registry, amounting to $2,138 64.

If necessary to determine any matters of detail or valuation, the case may be sent to an auditor.

The libel, answers, claims, protest, surveys, and bills of lading are in the case, to be referred to by either party.

The libellant reserves the right, if it should be deemed material, to offer evidence to show that the sale to Riviere was not made in good faith, and does not admit that the disbursements and repairs made in Boston were furnished on the credit of the vessel, except in so far as that may be inferred from the fact of her being foreign, and reserves the right to introduce evidence to rebut that inference.

F. C. LORING, *Proctor for Libellant.*
C. W. LORING, *Proctor for Riviere, Claimant, and N. P. Mann & Co., and Joseph Ladd and al., material men.*

34 United States district court.

CHARLES FITZ
v.
THE "AMELIE."

It is understood that the statement of facts agreed to for the purpose of a hearing in this court shall not be binding in case of appeal, so far as either party shall express an intention not to be bound thereby, and shall not preclude them from introducing evidence to prove or disprove any facts therein stated, or any inferences therefrom, or any additional facts.

F. C. LORING, *Proctor for Libellant.*
C. W. LORING, *Proctor for Claimant Riviere, N. P. Mann & Co., and Joseph Ladd and als.*

35 *Protest of the Plata.*

DUTCH GENERAL CONSULATE AT PORT AU PRINCE, (HAYTI.)

To all whomsoever it may concern : Know by these presents that Capt. W. Meyer, commanding the Dutch galiot "Plata," of 192 tons, (96 lasts,) belonging in Amsterdam, has appeared, April 25, 1862, before the Dutch general consul at Hayti, residing at Port au Prince, for the purpose of announcing his arrival on that day at this port, with ship and cargo damaged, while on a voyage from Surinam to Boston, (America,) and to enter a protest for the purpose of justifying his proceedings.

In consequence whereof said Capt. Meyer has again appeared, April 28, in the aforesaid general consulate, before the undersigned, for the purpose of extending said protest, which herewith is done.

The same has produced his journal, and upon oath has affirmed the following statement:

That after having taken in cargo, consisting of sugar and molasses, he had gone to sea, March 16, 1862, the ship being tight and sound and provided with everything necessary for the voyage; that he had continued the voyage until March 24 without particular incidents; that March 25, in a heavy sea from the north and somewhat changeable wind, the ship had labored hard and shipped much water; that April 3 the weather had brightened and sea somewhat decreased; that April 6 and 7 the sea had again run very high, wind W.SW. to W. NW., and that much water had been shipped; that April 8 and 9 the gale had increased, and the sea running very high, much water had been shipped; that the ship had always been kept dry; that April 10 a hurricane from S. SW. and W. had raged, and that in a heavy thunderstorm the lightning had struck the topsail and had torn it into shreds; that he had therefore been obliged to heave-to and close-reef the sails still standing, and to furl them; that April 11 the hurricane had increased from N. NW., with a terrific sea, and that under close-reefed brigsail the ship had been hove-to; that in the afternoon of that same day a heavy sea had struck the brigsail, and had torn it; that then, under close-reefed schooner-sail, the ship had again been hove-to; that at 11¾ o'clock at night a heavy
36 sea had been shipped, which had stove in the large boat and water-casks, and had thrown the ship on her beam-ends, by which the cargo under deck had become loose, and necessitated the transfer of the molasses casks to larboard; that at 12 o'clock 18 inches of water had been found at the pumps, and that the ship had been pumped as much as was possible; that at 12½ o'clock, in spite of continual pumping, the water in the ship had increased to 3 feet, and by 1 o'clock to 4 feet, and that it had been ascertained that the larboard side of the ship, from the fore-shrouds to the main-shrouds, had broken loose, and that the water was entering the ship through the opening thus made; that in consequence whereof he had been obliged to lay the ship upon her starboard side; that the whole crew had continually worked the pumps, and that pains had been taken to stop the leaks; that thereupon at 3 o'clock the water had commenced to decrease; that at 5 o'clock 2 feet water had been in the ship, and at 9 o'clock the ship had been pumped dry; that in order to preserve ship and cargo and to lighten the ship he had been obliged to throw overboard 10 casks of molasses, and again 20 casks, altogether about 30 casks; that April 12, ship dry, he had seen in the hold that the fore chainwale had been torn up 7 to 8 feet; that the deck-beams played up and down 3 inches, and that near the fore-shrouds 3 chain-plates had sprung, and that the bolts had worked out; that the ship appeared to be without connexion, and that in the hold daylight was visible through the butts; that, under the circumstances, he had determined to make the nearest port, and in consequence had kept off

for Bermuda; that April 13 course had been set to Bermuda, but as the wind had run easterly, and as the ship could only be sailed upon her starboard side, he had been obliged to change his course and to keep off for St. Thomas; that the leaks had been stopped as well as circumstances would permit, and that the laboring of the ship had given rise to suspicions of great damage sustained, and that the weather continuing bad and the ship constantly laboring very hard, he had given up all hope of deliverance; that April 14–15, a high sea running, the ship had been kept dry, and the boat been partly repaired; that April 16 the wind had run more southerly, and the sea had become a little smoother; that April 17–18, the wind still more southerly, he had been obliged to keep off for Port au Prince; that the ship had continued laboring hard, with her timbers creaking; that wind and sea gradually decreasing, he had made, April 19, the Bahama
islands; had seen, April 20, Inagua; and April 21–22 the wind,
37 E. NE. and SE., being light, he had sighted Cuba April 23;
that he had been off Port au Prince on the morning of April 25; that he had taken a pilot on board on the afternoon of the same day, and had entered the port of Port au Prince.

The captain declares further that ship and cargo are damaged; that he refers, however, to his protest, and by these presents in the most solemn manner protests against all and every claim for indemnity brought in against him, his crew, his ship, his freight, and his freighters, while he affirms upon oath that the damage suffered has been brought about as little through his own fault or negligence as through the carelessness of his crew, which is herewith taken *ad actum*, and in consequence of which declaration the present instrument has been made out before the undersigned in the said Dutch general consulate, and to attest which his name, together with the seal of the consulate, has been affixed thereto.

The captain, as well as two witnesses, together with the first and second mates and two sailors, have signed the present protest, and confirmed by oath, to wit, the first and second mates and two sailors, together with the captain, the truth of the same.

Done in the Dutch general consulate at Port au Prince, on the 28th of April, 1862, by me.

(Sign.) CHRISTIAN SCHULTZ, *General Consul.*

Witnesses:

(Sign.) ALFRED VIAN.
I. M. MURFHA.

(Sign.) W. MEYER, *Captain*.
" C. H. JOUATZEN, 1*st Mate.*
" S. BELLIMA, 2*d Mate.*
" G. BOCK, *Sailor.*
JAN. VANDERBUY, *Sailor.*

June 28, 1862.

The captain declares further that, after discharging of cargo, three hhds. of sugar, penetrated by the sea water, had almost leaked empty, and several other hhds. had received damage; that further, 47 casks,

2 tierces, and 3 bbls. molasses had been partly thrown overboard, partly, through the sea breaking over the ship, stove in, and thus had been lost.

(Sign.) W. MEYER.

38 *First survey.*

We, the undersigned, at the request of the Dutch consul general at Port au Prince, proceeded on board the Dutch galiot Plata to survey damage sustained at sea on her passage from Surinam to Boston, U. S., and put back to this port.

On examining the port side found for the entire length of the vessel that the gunwale had been started from the deck, as well as several of the deck seams started; also 32 feet of gunwale plank split, main rail broke in midships, 14 feet top-gallant rail gone, 31 feet in length of top-gallant bulwarks gone, waterway seam on the starboard side started, and further, on this side, 15 feet in length of top-gallant bulwarks gone.

Main hatchway seams were started, one eye-bolt in the deck broke and several started; door and starboard foreside of the house on deck stove in, and the long-boat considerably damaged.

On examining outside found on the portside 3 fore-channel plates entirely broke, bolts also started of the remaining two, 21 feet of outside and top plank badly split, and topsides in midships badly shaken, with a considerable number of the bolt-fastenings loose; also one rudder-iron loose.

On proceeding on board we immediately sounded the pumps, which showed 9¼ inches in the well. At the expiration of one hour and ten minutes found the same quantity, the ship having made no water puring that time.

Port au Prince, 26th April, 1862.

(Sign.) DAVID GORRIE,
Master of British Brig Levant.
JOHN CARSFUSEN,
Master of Danish Schooner-brig Frederick.

39 *Second Survey.*

PORT AU PRINCE, *May 6th*, 1862.

Christian Schultz, esq., Dutch consul general, present:

SIR: The undersigned, appointed by you to hold a final survey on the Dutch galiot Plata, Captain Meyer, arrived at this port with damage to ship and cargo on the voyage from Surinam to Boston, U. S., have the honor herewith to submit their report.

They have proceeded on board, and after a careful and attentive survey of the ship and cargo have found the following damage: The gunwale started from the deck the entire length of the ship, some of the deck seams open, 32 feet of gunwale plank split, main rail broken, 14 feet top-gallant rail and 31 feet top-gallant bulwarks gone, main hatchway seams started, one eye-bolt broken in deck and several started, starboard side of house on deck stove in, starboard bulwark and rail partially gone, long-boat badly damaged. On examining the port side of the ship outside they have found 3 fore-channel plates broken, and the bolts started in the remaining two channel plates, 21 feet of outside top plank badly split, and topsides amidships broken, with many bolt-fastenings loose. On going into the hold of the vessel they found several of the pieces on the port side split, with the seams much opened. On examination of the cargo as much as was possible, they found about thirty casks or hogsheads of molasses empty, having been versed by the master, and the contents allowed to be pumped out in order to lighten the vessel. Eight casks of sugar partially empty, and the sugar remaining in the casks damaged by sea water.

The surveyors, in the interest of all concerned, recommend that the vessel be repaired here sufficiently for her to proceed on her voyage to Boston, it being well understood that total and adequate repairs to the damage which the vessel has suffered being impossible to make in this port, but a partial repair, quite sufficient to make the vessel seaworthy, being practicable. These repairs will be as follows:

Seven knees in the port side to come off, and to be replaced
40 by new hardwood knees, securely fixed and bolted; 35 feet
of deck planking in the port side to be removed and replaced by new, with 18 bolt fastenings through; 1 side plank 21 feet long and 5 inches thick to be removed and replaced by new plank; all the fore-channel plates to be removed and repaired; new bulwarks and rail to be made where the old ones have gone; the damaged side of the deck-house to be repaired; the main rail to be bolted; the boat to be thoroughly repaired; new bolts and fastenings to be put into the deck and sides where they are required.

They report that the time which these repairs will take will be, in their estimation, from 25 to 30 days, and they estimate the entire repair to amount to amount to about ten thousand Haytian dollars.

In day-book of the vessel it is repsented that in the gale which she suffered 1 boat was broken, the staysail, topsail, and jib blown away, 5 water casks lost overboard, sundry ropes and a hawser lost overboard, &c.

In testimony whereof we have hereunto subscribed our names.

(Signed) G. EUSTIN HUBBARD,
Agent N. Y. Underwriters.
(Signed) T. N. TWEEDY,
For John Hearne & Co., Lloyd's Agents.
(Signed) DAVID GORRIE,
Master of Brig Levant.
(Signed) DENNIS, *Directeur de Chantier.*
(Signed) CHS. F. TEELS, *Master of Brig Afton.*

Last survey.

The undersigned, having been appointed by Mr. Schultz, Dutch consul general at this city, to re-survey the Dutch galiot Plata, Capitaine Meyer, entered at this port in distress in consequence of damages experienced on the voyage from Surinam to Boston, beg herewith to submit their report.

41 The repairs ordered by the first survey have been proceeded with all possible despatch, and as thoroughly as can be done in this port, the object of all parties concerned being to make sufficient repairs in the vessel to render her seaworthy to continue her voyage to port of destination. Upon taking off the side planking in order to replace them by new, as was ordered, much damage to the hull of the vessel was discovered, and of such a startling character that it necessitated the immediate calling of another survey to ascertain what could best be done for the interests of the owners of the vessel and cargo, the insured and the insurers, and all of whom it doth or may concern. These fresh damages were beyond the search of the first surveyors to discover, and could only be seen when the side of the vessel was uncovered to be repaired.

Therefore we, the undersigned, Lloyd's agents at this city, the agent of the New York and Philadelphia underwriters, and three competent shipmasters of vessels now at anchor in this port, do hereby certify that we have, on the day of the date hereof, gone on board the said Dutch galiot Plata, and that after a careful examination and survey we have found the following damage not mentioned in the first survey.

Twelve of the side timbers of the ship on the port side between the forerigging and amidships entirely broken, and would have to be replaced by new and solid timbers before the vessel could proceed; also on moving the band below the waters on the copper it was found bulged out in several places, which led us to infer that more damage to the timbers has taken place lower down than what can now be seen. Also three more of the heavy side planking on the port quarter split and broken, and necessary to be replaced; also the sternport of the vessel broken, to repair or to replace which would require the unshipping of the rudder.

It is furthermore the opinion of the surveyors that on uncovering the vessel still more, further damages would be found, the whole port side of the vessel appearing to be broken.

To make now the necessary repairs in the vessel she would have to be entirely discharged, a great portion of the copper stripped off the port side, the planking removed and entirely replaced, and new and solid timbers put into her; the sternport thoroughly repaired, and new knees put in all along the port side.

There being in this city no docks, no competent ship-carpenters nor workmen on vessels, no requisite timber to be employed

42 for the side timbers of vessels, the surveyors are obliged to come to the conclusion that it is not possible to make the necessary repairs in this port in a proper manner.

Furthermore, could the requisite timbers be obtained here, the repairs now necessary for the prosecution of the voyage could not be made, in our opinion, at less than three thousand five hundred Spanish dollars, and that the time to be employed for such repairs could not be less than four months.

By report of the master of the vessel, and in conformity with the advices of the Dutch consul general, one thousand Spanish dollars or thereabouts have already been expended for repairs thus far made; therefore the total repairs would amount to four thousand five hundred Spanish dollars, which is in our opinion more than the vessel would be worth after the repairs were effected.

Under these circumstances, and in consequence of what is here above written, we do herewith advise, believing that we are acting therein for the best interests of all concerned, that the said Dutch galiot Plata, with her sails, rigging, chains, and anchors, and all appertaining and belonging to her, should be sold at public auction for account of whom it may concern, and that the cargo of sugar and molasses, laden by the said Dutch brig Plata at Surinam, destined for Boston, should be transhipped for its port of destination in the best possible manner, for account and for the best interest of whom it may concern. In testimony whereof we have hereunto set our names at Port au Prince this thirtieth day of May, 1862.

(Signed) J. EUSTIN HUBBARD,
Agent N. Y. Underwriters.
(Signed) W. McEWEN,
Master of Bark Wilhelmeni.
(Signed) C. T. PEFFER,
Captain of Hamburg Brig Emilie.
(Signed) ANDREW P. ALDERSON,
Master of Schr. Anna Hinks, of Plymouth, Mass.
(Signed) JOHN HEARNE & CO., *Lloyd's Agents.*

43 *E. Horton's bill.*

1862. Mr. B. Riviere to E. Horton, Dr.

June 16.	To 50 bolts, 40 lbs., at $1½ Haytian		60
	" repairing pulley-block		30
	" 40 bolts, 50 lbs., at $3	1	50
	" 16 bolts, 20 lbs., at $3		60
	" 6 bolts, 8 lbs., at $3		24
	" 20 bolts, 70 lbs., at $3	2	10
	" 2 mast-head bands, 39 lbs., at $3	1	17
	" 1 bare iron chain plate, 8 lbs., at $3		24
	" repairing 2 flat bars, at $4		8
	" 7 bolts, 4 lbs., at $3		12
	" 12 bolts, 8 lbs., at $3		24
	" 19 bolts, 14 lbs., at $3		42
	" 6 bolts, 2 feet long, 40 lbs., at $3	1	20
	" 3½ lbs. nails, at $2½		8.75
	" 4 bolts, 9 lbs., at $3		27
	" 25 bolts, 41 lbs., at $3	1	23
	" 4 bolts, 12 lbs., at $3		36
	" 4 lbs. spikes, at $2½		10
	" 5 bolts, 3 lbs., at $3		9
	" 25 bolts, 13 lbs., at $3		39

June 16.		To repairing 5 chain plates, 25 lbs., at $3		75
		" repairing 5 small plates, 12 lbs., at $3		36
		" 2 staples for		4
		" 1 bolt, 1 foot long, 1½ lbs., at $3		4.50
		" 1 bolt, 1½ foot long, 3 lbs., at $3		9
		" 8 bolts, 1½ foot long, 14 lbs., at $3		42
		" 22 bolts, 31 lbs., at $3		93
		" 7 bolts, 10 lbs., at $3		30
		" 4 bolts, 7 lbs., at $3		21
		" 14 bolts, 22 lbs., at $3		66
		" 1 lb. nails, at $2½		2.50
	44	" 9 bolts and chain plates, 13 lbs., at $3		90
		" 4 knees, 454 lbs., at $3	13	62
		" 8 rings, with points		22
		" 2 knees, 207 lbs., at $3	6	21
		" 3 bolts, 50 lbs., at $3	1	50
		" 16 bolts, 17 lbs., at $3		51
		" 5 lbs. nails, at $2½		12.50
		" 7 steel marling spikes, at $16	1	12
		" 9 bolts, 18 lbs., at $3		54
		" 4 bolts, 10 lbs., at $3		30
		" 10 bolts, 15 lbs., at $3		45
		" 2 bands pump head, 17 lbs., at $3		51
		" 8 bolts, 28 lbs., at $3		84
		" repairing strap band		30
		" 2 bars with points and rings		16
		" 2 bolts for pulleys, with nuts		13.50
			$41	96.25

Rec'd payment. **E. HORTON.**

45 *Account of the repairs of the galiot "Amelie."*

1862.		
June 26.	Paid to carpenters Coutin, Auguste, Theodore, Julian, Vernian, Tromeward, for 6 days' work on board of the galiot, $30	$1,080
	Paid taken for Elie for 4 pieces of wood	280
July 5.	Paid to the carpenters for 6 days' work, $30	1,080
6.	Paid P. Elie Sun, 1 cwt. of wood	720
	Paid John Heard for 2 days' work for repairing sails	468
12.	Paid to the carpenters for 6 days' work, $30	1,080
	Paid N. Cre Vit for 1 piece of linen for repairing the sails	250
	Paid 50 lbs. clans botten	100
19.	Paid to the carpenters, 6 days' work, $30	1,080
	Paid 1 baril bran	150
27.	Paid to the carpenters, 6 days' work	1,080
29.	Paid Romulus Vitun, 850 lbs. cordage, $4	3,400

Aug't 2.	Paid Chas. Saing, 1 cwt. sranton, Gendron and Etouffe	$780
	Paid Monument for calking of the ship	2,000
	Paid E. Orton (blacksmith) his account for supplies	4,100
	Paid to Mr. Eugene for repairing sails	985
	Paid materials for making repairs	160
	Paid 2 water casks	250
	Paid for repairing long-boat	180
	Paid 1 spy-glass	100
	Paid charts for the use of the vessel	305
	Paid cabin fixtures	230
		19,948.25

$19,948.25 Haytian, at $\frac{8}{100}$ for gold, as per Teel's depos'n, is $1,695 31.

In addition, naturalization of vessel cost $200 Spanish; the stores and flag not included.

Port au Prince, 18 October, 1862.

46 Capt. Wm. Meyer, of Dutch galiot Plata,

Dr.

1862.		Exch.	Spanish money.	Hayt'n money.
April 26.	To paid Capt. Carsfusen, 1st survey,	$224	$8	$112
	To paid Capt. D. Gorrie, 1st do.		8	112
	To paid Doctor Robion		4	56
	To paid pilot, inwards			30
30.	To paid Capt. W. Meyer			200
May 7.	To paid do.			1,000
19.	To paid do.			1,000
	To paid Capt. D. Gorrie, 2d survey		16	224
	To paid Capt. Afton, 2d survey		16	224
	To paid John Hearne & Co., Lloyd's agents 2d survey		20	280
29.	To paid Capt. W. Meyer		18	252
31.	To paid Capt. Alderson, 3d survey		16	224
	To paid Capt. McEwen, 3d survey		16	224
	To paid Capt. Peffer, 3d survey		16	224
	To paid John Hearne & Co., Lloyd's agents 3d survey		16	224
	To paid Mr. Hubbard, agent for American underwriters, 2d and 3d surveys		40	560
	To paid Denys, carpenter			9,494
June 2.	To paid Capt. Meyer, wages 2d mate, balance, at P69.76 Sailor Van du Berg 58.12 Sailmaker work 67.16 Boy L. Hull 23.36			
			218.41	3,057.74

June 3.	To paid Capt. W. Meyer		$1,000
12.	To paid do.		2,000
26.	To paid do.	$3$30	420
28.	To bill of Dutch consulate...........	50	700
	To paid Capt. Meyer................		5,000
	To paid do.		7,212.47
	To commission, including advances, 5 pr. ct.		1,780.54
			35,610.75

(Signed) CHR. SCHULTZ.
Port au Prince, 28 June, 1862.

47 In account with Chr. Schultz, Port au Prince,
Cr.

1862.			Hayt. money.
June 28.	By amount received of Capt. Meyer, viz:		
	Proceeds of 47 hhds. sugar,	Sold at public auct'n	$30,523.25
	do. of 9 bbls. "		
	do. of 1,800 lbs. copper,		
	do. of 20 bbls. molasses,		
	do. of vessel		5,087
	P'd master 21,141=1,691.		
			$35,610.75

True copy certified.
Dutch Consulate Gen., at Port au Prince, 30 July, 1862.
[SEAL.] CHRISTIAN SCHULTZ, *Consul General.*

48 *Depositions.*

The deposition of Alden Gifford, of Chelsea, in said district, in behalf of the libellant, in the above-entitled case.

Interrogatories propounded by Francis C. Loring, esq., proctor for libellant:

First interrogatory. Do you know a vessel called the Amelie? If yea, describe her, and state your means and opportunities of knowing her, and under what circumstances and how many times you have examined her, and what sort of a vessel she is.

Answer to first interrogatory. I know that vessel. She is a Dutch galiot with two masts; square-rigged forward, and fore-and-aft, aft. I examined her on her arrival at this port, by the direction of John S. Tyler, the day after her arrival the first time. She was then lying at the T wharf, with a cargo of logwood in. I have examined her three times—first, while she was loaded; then, after she was discharged. I then examined her again on the blocks at East Boston, out of water. She is a very strong vessel—very strong, indeed; originally a very superior vessel.

Second interrogatory. What evidence, if any, was there of her having been repaired before she sailed on her voyage to Boston, at the port whence she sailed? Please state particularly what repairs had been there made.

Answer to second interrogatory. There was very little evidence of her having been repaired. There was one plank which had been put in new, apparently, on the larboard side, next the water-way on the deck. That was all the indication there was above the deck. Below, there had been two iron knees put in, probably, though I could not tell positively from their appearance. I could not discover anything else, myself, outside or in.

Third interrogatory. Is your answer to the last question a matter of opinion and judgment, or of fact? Does it or not admit of any doubt in the mind of a practical man?

(NOTE.—The last half of the interrogatory objected to as leading and otherwise.)

49 Answer to third interrogatory. It is a fact, because I examined it very thoroughly myself. I should not think it did admit of any doubt in the mind of a practical man.

Fourth interrogatory. What was the state of her copper, how old, what its quality? If the vessel had worked or strained at sea after it was put on, could it or not appear as it did? Please state your reasons fully.

Answer to fourth interrogatory. Good, unusually so. I was under the impression it was put on two years ago; but it was as perfect as if it was put on the day before. There was not a wrinkle nor a break in it. If she had worked or strained any, it could not have appeared so; a vessel straining any in the least shows it in her copper first of anywhere. No vessel can strain without showing it by wrinkles or rolling in the copper.

Fifth interrogatory. In what order did she discharge her cargo here?

Answer to fifth interrogatory. In good order, perfectly dry.

Sixth interrogatory. What repairs did she need here?

Answer to sixth interrogatory. They put in a new foremast, I think, and a new windlass; the foremast was rotten, and I think the windlass was too. I do not think she needed anything; she did not look as though she did.

Seventh interrogatory. How would she compare as to strength and durability with the average class of vessels built in this country?

(NOTE.—"Objected to.")

Answer to seventh interrogatory. She was much better; decidedly better.

Eighth interrogatory. Suppose said vessel to have sailed from Surinam for Boston with a cargo principally of sugar and molasses, to have encountered perils of the seas making a jettison necessary, and that she put into Port au Prince, was there repaired, and thence sailed for Boston. Judging from the appearance of the vessel when examined by you, can you state, and with what degree of certainty and confidence, whether or not it is possible that she sustained the damage, was in the condition, and needed the repairs at Port au Prince described and mentioned in the extracts from the protest and surveys now shown to you? Please to state fully and particularly, and to give the reasons and facts upon which your answer is founded, and whether it is a matter of opinion or fact.

(NOTE.—"Interrogatory objected to for form and substance.")

50 Answer to eighth interrogatory. I do not think she sustained the damage set forth in the protest and surveys; there was no indication of it. I do not think she was in the condition at Port au Prince to need any repairs to enable her to perform her voyage to her port of destination. The vessel was an unusually strong and fine vessel, and a fine sea vessel; vessels of that class are the finest sea-going vessels in the world; are very light sparred, and never labor any, and there is seldom any bad weather in those latitudes to make a vessel strain. My answer is a matter of fact and opinion also: as to the condition of the vessel, it is a fact; my opinion as to the repairs is founded on that.

Ninth interrogatory. Can you state with certainty whether or not her copper, or any part of it, and if so, how much, had been taken off at Port au Prince?

Answer to ninth interrogatory. I can state with certainty that none of the copper had been taken off at Port au Prince.

Tenth interrogatory. After the vessel was sold in Boston, whether or not the copper was taken off? If yea, for what reason? Was it replaced? If not, why not? State all you know about it and its value.

Answer to tenth interrogatory. It was taken off and the vessel sent to sea without it, I was told.

Eleventh interrogatory. Whether or not were the repairs made at Port au Prince—such as they were—sufficient to make the said vessel seaworthy? What, if anything, was necessary to be done to make her so, in Boston?

Answer to eleventh interrogatory. I do not think there was anything done there to make her any more seaworthy than she was before. I should not think she needed anything done to her at Boston to make her seaworthy—not to her hull; if her masts were rotten, of course they must be replaced.

Twelfth interrogatory. What has been done to the vessel since she was sold by the marshal in Boston? Where is she now?

(NOTE.—"Objected to.")

Answer to twelfth interrogatory. I only know what I have heard about the sale and her present employment.

51 Cross-interrogatories by C. W. Loring, esq., proctor for claim'nt:

First cross-interrogatory. How much of her copper did you see? When and where did you see it? Was the vessel afloat or in dock? State particularly.

Answer to first cross-interrogatory. I saw the whole of it. She was on the blocks at East Boston, at Ladd & Piper's wharf. It was soon after she was discharged. May be two or three days after.

Second cross-interrogatory. What was her cargo? How much of it did you see delivered?

Answer to second cross-interrogatory. Her cargo was logwood, and I saw the whole of it, either on the wharf or on board the vessel.

Third cross-interrogatory. How long were you present when they were delivering cargo?

Answer to third cross-interrogatory. I was there when they were delivering cargo three or four times—sometimes half an hour and sometimes more.

Fourth cross-interrogatory. Did you examine particularly the fore chainwale?

Answer to fourth cross-interrogatory. I did.

Fifth cross-interrogatory. Did you examine the deck-beams, so that you could say whether they had played up and down?

Answer to fifth cross-interrogatory. I did, and I could not see any indication of it anywhere; it could not have been the case.

Sixth cross-interrogatory. How was this near the fore-shrouds?

Answer to the sixth cross-interrogatory. I did not notice anything unusual there.

Seventh cross-interrogatory. Did you examine the chain plates near the fore-shrouds?

Answer to seventh cross-interrogatory. I did not particularly examine them, because I did not know as there was anything the matter with them.

Eighth cross-interrogatory. Did you examine her gunwale?

Answer to eighth cross-interrogatory. Yes, I did.

Ninth cross-interrogatory. Had it not been started and split?

Answer to ninth cross-interrogatory. I do not recollect seeing anything of that kind.

Tenth cross-interrogatory. Had it been recently renewed in whole or part?

Answer to tenth cross-interrogatory. I did not see anything new about it.

52 Eleventh cross-interrogatory. Had the bulwarks or rail been carried away and renewed?

Answer to eleventh cross-interrogatory. Some of the bulwarks had been carried away and replaced by new; about the rail, I do not know.

ALDEN GIFFORD.

United States district court, district of Massachusetts.—The galiot "Amelie," Riviere and others, claimants.

The deposition of Charles F. Teel, master mariner, taken in behalf of said Riviere, on the ninth day of February, 1864, at Boston, in said district.

Interrogatories by C. W. Loring, proctor for claimants:

First interrogatory. State your name, age, residence, and occupation; and if you have followed the seas, state for how long and in what capacities?

Answer to first interrogatory. Charles F. Teel; 41 years; residence, 2 Wall st., Boston; am master mariner; have been to sea 25 years, as master 10 years.

Second interrogatory. Were you in Port au Prince in May, 1862? And if yea, how came you there?

Answer to second interrogatory. I was; I can't exactly tell without looking over the log-book if it was in the month of May. I was there as master of brig Afton; had been a constant trader there.

Third interrogatory. How many times had you been there before this time, and how long did you stay when there?

Answer to third interrogatory. I had made twenty-five voyages there at the time of that survey; the usual time I staid there was from fourteen to twenty days.

Fourth interrogatory. Did you or not at that time see the Dutch galiot La Plata there? Were you or not called upon to survey her?

Answer to fourth interrogatory. Yes; I saw her there, and was called upon the second survey.

Fifth interrogatory. What examination, if any, did you make
53 of her; state whether it was a careful one or not, and how long
it continued?

Answer to fifth interrogatory. The survey was made as careful as we could make it; it took about two hours, as near as I can judge of the time we were on board.

Sixth interrogatory. State what you saw of damage.

Answer to sixth interrogatory. It is so long ago I havn't got it all in my head to repeat; but whatever is on the survey, that is correct.

Seventh interrogatory. State what you do remember.

Answer to seventh interrogatory. I remember her outside planking being badly split, so that you could see daylight through it, that is, the top planking; the plank shear split on the inside; channel plates broken; several of the knees inside split; bulwarks gone on one side; the house stove on one side, and the vessel more or less strained all over. Those I think are the principal items.

Eighth interrogatory. How were her deck seams?

Answer to eighth interrogatory. We didn't overhaul them all; some of them, though, on that side where the sea struck her, were open, started; when the plank shear is split the seams must be open.

Ninth interrogatory. How were her main hatchway seams?

Answer to ninth interrogatory. I don't remember; I couldn't say.

Tenth interrogatory. Were there or not any eye-bolts broken or started?

Answer to tenth interrogatory. Yes, I think there were some eye-bolts started on her deck.

Eleventh interrogatory. How was the long-boat?

Answer to eleventh interrogatory. The long-boat was stove.

Twelfth interrogatory. How were the seams on the port side of the vessel when examined from the inside?

Answer to twelfth interrogatory. Couldn't examine the seams of a vessel from the inside, except where the ceiling might be open.

Thirteenth interrogatory. Was or not any portion of the ceiling removed?

Answer to thirteenth interrogatory. No, sir, the ceiling was split.

Fourteenth interrogatory. How were her seams outside on the port side?

Answer to fourteenth interrogatory. Those that were examined were very open between the fore and main rigging.

54 Fifteenth interrogatory. Did you or not examine the cargo? If yea, how did you find it?

Answer to fifteenth interrogatory. Yes, sir; we found, I don't remember the number of hogsheads of molasses started out. I believe it was thirty, and eight or nine tierces of sugar partially out— some half out and some of them three-quarters.

Sixteenth interrogatory. Whether or not in her then condition was the La Plata in a seaworthy condition to proceed upon her voyage to Boston?

Answer to sixteenth interrogatory. No.

Seventeenth interrogatory. What did she require to enable her to proceed on her voyage?

Answer to seventeenth interrogatory. She would require to have those planks taken out of her that were split, and new planks outside; knees put in her to strengthen her; she would require to be all recalked above water; new channel plates on her port side; new bulwarks; to repair the house and the long-boat. She required some new sails; couldn't exactly say what they were now, but some that she had split, and possibly a great many other things which it is impossible for me to remember now.

Eighteenth interrogatory. Are you acquainted with the facilities for making repairs and the materials to be had at Port au Prince? If yea, state what they were at the time the La Plata was there.

Answer to eighteenth interrogatory. The facilities for doing any kind of carpenter's work is very poor. There is no oak planking; she could get mahogany planking, that is all; it would do for temporary repairs.

Nineteenth interrogatory. Could or could not full and adequate repairs have been made on the La Plata at Port au Prince?

Answer to nineteenth interrogatory. No, sir.

Twentieth interrogatory. If upon taking off the side planking of the La Plata much further damage had been found to her timbers, some of which were broken, and her stern-post found to be broken, whether or not could the same be replaced and repaired readily at Port au Prince?

Answer to twentieth interrogatory. It could not be done without incurring enormous expense, more, probably, than the vessel would be worth.

55 Twenty-first interrogatory. Are there any docks at Port au Prince?

Answer to twenty-first interrogatory. No, sir.

Twenty-second interrogatory. Was the Plata a new or old vessel?

Answer to twenty-second interrogatory. An old vessel. It is impossible to judge from appearances how old, but between twenty and thirty years.

Twenty-third interrogatory. Was any of the rail carried away?

Answer to twenty-third interrogatory. Yes; I included that in the bulwarks.

Twenty-fourth interrogatory. Were you at Port au Prince at the last survey?

Answer to twenty-fourth interrogatory. No, sir.

Cross-interrogatories, in behalf of libellant, by Francis C. Loring:

First cross-interrogatory. Have you lately seen the survey, or what purports to be a copy of it?

Answer to first cross-interrogatory. Yes, I have.

Second cross-interrogatory. Without having seen that, could you have described her condition?

Answer to second cross-interrogatory. Well, I could, just the same as I have described it.

Third cross-interrogatory. Did you see all the damages therein described, or were some of them stated to you by the master?

Answer to third cross-interrogatory. I saw all the damages therein described except the sails; those I did not see.

Fourth cross-interrogatory. Did you examine her bottom?

Answer to fourth cross-interrogatory. It was impossible; she was there full of cargo; we couldn't examine her bottom.

Fifth cross-interrogatory. How do you know that the name of the vessel you have described was the La Plata?

Answer to fifth cross-interrogatory. I know by what she had painted on her stern; that is all the way.

Sixth cross-interrogatory. Did you make any estimate of the cost of the repairs mentioned as necessary in the survey? If so, what was it?

Answer to sixth cross-interrogatory. Yes, sir; ten thousand Haytian dollars for temporary repairs.

Seventh cross-interrogatory. Have you that estimate, or a copy? If so, produce it.

56 Answer to seventh cross-interrogatory. No, sir.

Eighth cross-interrogatory. What was the value of the Haytian dollars at that time?

Answer to eighth cross-interrogatory. Eight cents in gold currency.

Ninth cross-interrogatory. Then your estimate of repairs would have been $800 gold?

Answer to ninth cross-interrogatory. Yes—temporary repairs.

Tenth cross-interrogatory. Does your estimate include sails and rigging?

Answer to tenth cross-interrogatory. No.

Eleventh cross-interrogatory. Was said vessel stoutly built, and strong, or otherwise?

Answer to eleventh cross-interrogatory. She was as stoutly built as that class usually is—she had been in her day; that class of vessels is always built strong when they are first built.

Twelfth cross-interrogatory. How much do you suppose it would have cost to calk her?

Answer to twelfth cross-interrogatory. The calking was included in the estimate. I don't know what the price of oakum was at that time there; we made a whole estimate.

Thirteenth cross-interrogatory. You did not, then, in making your estimate, compute particular items, but having a general idea of what repairs were wanted, made a general idea of what they would cost?

Answer to thirteenth cross-interrogatory. Yes, sir.

CHAS. F. TEEL.

February 9th, 1864.

The following testimony, taken after appeal from the decree of the district court, was used at the hearing of said cause in this circuit court:

Statement of Walter Sharp, mariner, for libellant, admitted by consent.

I was employed on board the Amelie after the marshal's sale; saw no repairs made to stern-post or any part of hull; witnessed subsequent repairs; saw nothing done to hull, except to take off copper
57 and calk it; went in her as mate to Liverpool; behaved well
on passage, which was 40 days; was tight; showed no signs of weakness or of broken timbers, knees, or planks; was sold at Liverpool; know nothing about her since; had a good deal of bad weather on the passage out; she appeared to be strong, staunch, and seaworthy.

I was employed as mate in the last part of March, 1863, and sailed for Liverpool about the middle of April. First employed in Dec., 1862, or Jan., 1863, as shipkeeper, for about a fortnight after the marshal's sale. Between the time I was employed as shipkeeper and the time I was employed as mate, I saw her every few days.

WALTER SHARP.

Deposition of Andrew B. Alderson, for claimants.

Interrogatory 1. State your name, age, residence, and occupation; and if you have followed the seas, state for how long, and in what capacities.

Ans. My name is Andrew B. Alderson; age, forty-two years; residence, Plymouth, Mass.; I am a mariner; I have followed the sea twenty-seven years, and as master five or six years.

2. Were you in Port au Prince in May, 1862? And if yea, how came you there?

Ans. I was there at that time, as master of the schooner Anna Hinks, of Plymouth. We sailed from Boston with a cargo for Port au Prince.

3. Had you been there before? And if yea, how many times?

Ans. I had been there four or five voyages.

4. Did you or not at that time see the Dutch galiot La Plata there? Were you or not called upon to survey her?

Ans. I did see her there, and was called upon to survey her.

5. On what survey?

Ans. On the last survey.

6. What examination, if any, did you make of her? State whether it was a careful one or not, and how long it continued.

Ans. We examined the hull all over, every part of the hull. It was a careful examination of the hull, and continued half a day.

7. State what her condition was.

Ans. She was in a bad condition. The vessel had been
58 opened. Four of the outside planks of the bends had been
removed, and twelve timbers. I think it was. were broken and split; they were on the port side, between the bow and the main rigging; there were two or three more outside planks that were split, and would have to be removed; the stern-posts also were broken above water, and a portion of the port side bulged out below the copper about an inch.

8. To what extent was the stern-post broken?

Ans. To make it useless; that is, it was not considered seaworthy.

9. Where was it broken, and how was it visible to one examining it?

Ans. It was broken crossways; it was visible; the vessel was loaded at the time, and the stern-post was broken, as nigh as I can recollect, about a foot and a half above water.

10. Who first discovered that it was broken? Was it or not readily visible?

Ans. Capt. McEwen, who was on the same survey, first discovered it; it was readily visible; it had been overlooked by the previous surveys.

11. State what reason, if any, you know of, why it had been overlooked at the previous survey.

Ans. Because they hadn't examined I suppose; I know of no other reason; there was another reason, and a very good one; when we examined her the vessel had been in port some time, had got dried up, and showed very plainly all the bad defects in her.

11. What had caused the bulging out of the copper?

Ans. A bad strain, we thought, was the cause of it—a strain caused by the sea and water.

13. How were the planks under the copper? Were they or not bulged out? How low down could you find the copper was bulged out?

Ans. We could not tell whether the planks under the copper were bulged out or not; we could not see under the copper; it was not removed; the copper bulged out for about a foot and a half down.

14. How did you find out it was bulged out?

Ans. By feeling it and seeing it both.

15. Did you or not personally do this?

Ans. I did; that portion I examined myself.

16. Was or was not the copper wrinkled?

59 Ans. I don't remember—I couldn't say.

17. If the strain in the La Plata had been in her upperworks, would or would not her copper have necessarily been wrinkled?

Ans. It would not, unless the vessel were weak in the bottom.

18. In what part of the La Plata did you notice the injuries you have stated?

Ans. In the hull, in the port side principally.

19. What part of the hull, the bottom or upperworks?

Ans. In the upperworks.

20. Had the La Plata been in part repaired when you examined her?

Ans. Yes, sir, she had, on deck.

21. What repairs?

Ans. New plank shear had been placed in a portion of the deck; some iron work. I don't know the extent of the iron work.

22. Had she or not been calked?

Ans. A portion of the deck had been calked.

23. Did you or not notice her bulwarks, house, and long-boat?

Ans. I noticed her house and boat as being out of repair; the bulwarks had been removed, the broken portion of it, of the bulwarks and stanchions.

24. In what condition were the boat and house?

Ans. That I couldn't say; they were in a damaged condition; we didn't take particular notice of those little items; our principal object of survey was the vessel itself.

25. How were the bulwarks made?

Ans. They are made solid, a solid wall, the same as any other portion of the hull; they are not made the same as our vessels here.

26. Whether or not, in her then condition, was the La Plata in a seaworthy condition to proceed on her voyage to Boston?

Ans. She was not then.

27. What did she require to enable her to proceed on her voyage?

Ans. She required large repairs, extensive repairing—new timbers and new planking; she would require twelve new timbers, seven or eight outside plank, a new stern-post—bulwarks and rails to be replaced—iron work and chain plates, and also knees in the hold and deck frame. These are the principal things I remember, besides what had been done.

60 28. Are you acquainted with the facilities for making repairs and the materials to be had at Port au Prince? If yea, state what they were at the time the La Plata was there.

Ans. There are no facilities whatever for repairs, neither for stock nor labor.

29. Could or could not full and adequate repairs have been made on the La Plata at Port au Prince?

Ans. They could not, without incurring great expenses.

30. What time would it have taken to make such repairs?

Ans. It would have required three to five months.

31. What would it have cost, in your opinion, to have repaired the La Plata?

Ans. From three to four thousand Spanish dollars.

32. Was that more or less than her value when repaired, in your opinion?

Ans. It was more, in my opinion.

33. Were you or not in the gale that injured the La Plata?

Ans. I was in the same gale, about seventy-five miles from the La Plata.

34. On what voyage were you? and state how you know that you were in the same gale.

Ans. I was on the passage from Port au Prince to Boston; by comparing our log-books, I know we were in the same gale.

35. What was the weather?

Ans. It was a gale of wind—a very heavy gale of wind; but I don't remember how the wind was, whether to the eastward or the westward.

36. How was the sea?

Ans. The sea was very bad.

37. Did you suffer any injury?

Ans. No, sir, not of any importance.

38. Whether or not, if you had been the owner of the La Plata uninsured, would you have repaired or sold her at Port au Prince?

Ans. I should have sold her.

39. Do you or not know the other persons on the survey with you? Who were they? Did they attend with you?

Ans. I know one, Capt. McEwen, of New York; the other one was the master of a Dutch brig; they attended with me the survey.

40. Was there not another member of the survey besides?

61 Ans. There were two underwriters' agents, whose names I don't remember.

Cross-examination by F. C. Loring, esq., for libellant:

1x. For what sum could said vessel have been repaired there so as to be in suitable order to bring her cargo to Boston?

Ans. From three to five thousand dollars, as near as we could estimate.

2x. State particularly what repairs would have been needed for that purpose, and what they would have cost.

Ans. To replace whatever had been removed, and to put new where it had been broken and split, &c.

3x. Did you examine her copper? Was it heavy and good? What was its value there? Was it not worth as much there as in Boston?

Ans. I examined her copper; it was good; the value of her copper there I don't know—very little; it was not worth as much there as in Boston.

4x. Whereabouts, and in what places, if any, was the copper wrinkled or bulged, and if so, to what extent? Please to state only as to what you saw.

Ans. It was bulged out about an inch for a distance of fifteen or sixteen feet between the fore and main rigging on the port side.

5x. What was the difference in value of copper there and in Boston?

Ans. It couldn't be got off there in good order so as to be worth more than the labor of getting it off; but here it could be got off in good order; so that I couldn't answer that question.

6x. What kind of a cargo is logwood, heavy or light? Is it a cargo likely to strain a vessel or otherwise?

Ans. Logwood is light, and is not likely to strain a vessel. It is of a lively nature.

7x. Which would be the most laborsome cargo, logwood or the cargo she brought into Port au Prince?

Ans. Sugar and molasses would be the most laborious cargo by all means.

8x. Do you know what the master of the La Plata did with the proceeds of vessel and cargo?

Ans. I do not.

62 9x. What communication by steam is there between Port au Prince and any other places?

Ans. At that time there was no communication direct, I think, except to Kingston, Jamaica; but since, there has been a regular line with the United States. I don't really recollect whether there was at that time or not.

10x. If you had known that for $1,100 her hull could have been repaired so as to make her fit to bring a cargo to Boston, deliver it dry and in good order, and then, without additional repairs, except some calking, make a passage to England of 40 days, having a good deal of bad weather, and prove tight, staunch, and seaworthy on the passage, should you or not have thought it proper to condemn her at Port au Prince?

(NOTE —Objected to by respondents.)

Ans. I could not say what I should have done in that case.

Direct examination resumed:

1. May not a vessel when unseaworthy make a safe passage?

Ans. Yes, a good many do.

ANDREW B. ALDERSON.

Statement of N. P. Mann, for the claimants.

I, N. P. Mann, on oath, say that Riviere, the claimant in this case, was well known to me; that he had no personal credit or funds in Boston, by which he could have obtained repairs on the Amelie here. In September, 1862, I saw the master; he had no funds to repair the vessel; I had to advance him money to pay his wages; I sent the repairers to master to make the necessary repairs; I did not become responsible for the repairs, but referred the master to the repairers. [The master wanted us to put the vessel in substantial repair, and we refused to do it, or advance funds for it. He brought us in a schedule for repairs to vessel of some two or three thousand dollars for masts and kelson, &c.; and he also wanted us to pay him off, but we declined doing it.]* We did not think she was worth putting 63 on those repairs. Riviere was indebted to our firm; we had had dealings with him; we sent out a cargo to him, and he sent back a return cargo; we had several such transactions from two to four years. The logwood brought here at this time was sold, but did not pay the debt to us; there was a balance due of two hundred dollars in addition to the amount of our bill, sued in this case. This matter of the Amelie closed our business transactions with Riviere; we could not trust him further. The repairs made on the vessel were absolutely necessary. I have been extensively engaged in business in Port au Prince; it is a place where you cannot raise money readily on bottomry. I never was in Port au Prince myself. I think I told all the repairers I would not be responsible for the repairs.

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* Clause in brackets objected to by counsel for libellant.

Since the appeal was made, Mr. Riviere has paid me the amount due us.

I have been informed that the copper sold for $1,157 31.

N. P. MANN.

Statement of Joseph Ladd, one of the material men, in behalf of himself and others.

I, Joseph Ladd, on oath say, that Mr. N. P. Mann sent word to my firm of Ladd & Piper that there was some work to be done on the galiot Amelie, and sent me to the captain of the Amelie; I understood that the vessel was consigned to Mr. Mann. I saw the captain on board the vessel; he could speak little English, and he ordered the repairs, and told me what he wanted. In making the repairs I looked to the vessel and her owners, trusting to my lien on the vessel, she being a foreign vessel. The owners, as far as I knew, had no funds or credits here, and I made my charge on my books to the vessel and owners, and did not look to Mr. Mann, or charge him with the repairs. The repairs I made were absolutely necessary to enable the vessel to proceed on her voyage.

The vessel looked as if she had been recently calked from her copper up. The top had been repainted with a red free-stone
color. There were three planks in her port side that looked
64 as if they had been recently put in; they were between the
copper and her deck. The old channels had been repaired,
some new pieces put in; main and upper rail had been renewed in part. Some of the waist boards had been repaired. There had been some calking on the deck, on the sides and round the hatch; some pieces of deck plank taken out and put in. On her port side some screw bolts had been put through her outward plank and her timbers and inside planking, and set up by nuts inside. This is done sometimes when the timber is broken, split, or weak, to hold the outside plank on, and made the timber and plank fast, so that they will not give way. It is not so good as new timber, but is sometimes done. I couldn't say whether there were new knees or not. I did not examine for the purpose of seeing whether new knees had been put in.

She had temporary stanchions in her hold; they had to be replaced by new.

She had a bad place in her stern-post; but before we got to that place the United States marshal stopped us.

The plank was not taken off when repaired at Boston, and you could not tell whether the timbers had been broken or repaired without taking off the plank.

There was no new foremast put in; the old one was cut down a little and made shorter. There was no new windlass put in; the old one was repaired and patent gear put on.

Our firm finished repairs after she was sold. Copper was not taken off by our firm. We do all Mr. Mann's work.

65 This cause was thence continued from term to term to this present term, when the court here (to wit, September 4th) pronounced the following—

Decree.

This cause came on to be heard at the last October term of this court, A. D. 1864, and was fully argued by counsel. The same was thence continued under advisement to this present term, and now, after mature deliberation thereon had, this court doth order, adjudge, and decree that the decree of the district court in this cause be, and the same is hereby affirmed, and that the said libel do stand dismissed with costs for claimants. From which decree the said libellant, in open court, claims an appeal as follows:

And now the said libellant claims an appeal from the decree ordering his libel to be dismissed.

F. C. LORING, *Proctor.*

Whereupon the said appeal is allowed by the court, and said libellant gives good and sufficient security that he will prosecute
66 his appeal with effect, and answer all damages and costs if he shall fail to make the same good, which security is approved by the court.

A true record. Attest: JOHN G. STETSON,
Clerk pro tem.

UNITED STATES OF AMERICA, *Massachusetts district, ss:*

I, John G. Stetson, clerk pro tem. of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing pages, numbered 1 to 66 inclusive, are a true and full copy of the record and of all proceedings in the cause of Charles Fitz, libellant and appellant, *versus* The Galiot Amelie, her tackle, apparel, and furniture, and against all persons intervening for their interest therein in this court, (including all the evidence used at the hearing of said cause.)

67 In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Boston, in said district, this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and in the independence of the United States of America the ninetieth.

[SEAL.] JOHN G. STETSON,
Clerk pro tem.

68 Know all men by these presents, that we, Charles Fitz, as principal, and F. Anwood and Benj. F. Semes, of Gloucester, as sureties, are held unto Paul Riveire, of Port au Prince, merchant, in the sum of four thousand dollars, to the payment whereof we jointly and severally bind ourselves, our heirs, executors, and administrators. Dated at Boston, this twenty-second day of September, A. D. 1865.

Whereas, in a suit depending in the circuit court of the United States for the first circuit, wherein said Charles Fitz is libellant, and said Paul Riveire was claimant, judgment was rendered against the said Fitz, from which he has claimed an appeal to the Supreme Court of the United States to be held at Washington on the first Monday of December next: if the said Fitz shall duly prosecute said appeal, and answer all damages and costs if he fail to make the same good, then this obligation shall be void.

CHARLES FITZ. [L. S.]
F. ANWOOD. [L. S.]
BENJ. F. SEMES. [L. S.]

Witness:
RICH'D G. STANWOOD.
A. BISSON.

Approved: C. W. LORING,
Proctor for Claimant.

Approved: NATHAN CLIFFORD,
Ass. Jus. Sup. C't.

I, John G. Stetson, clerk pro tem. U. S. circuit court, Mass. district, hereby certify that the within is a true copy of the bond filed in the cause therein named, in the clerk's office of said circuit court.

Witness my hand and the seal of said circuit court, this tenth day of November, A. D. 1865.

[SEAL.] JOHN G. STETSON,
Clerk pro tem.

2 Phill Ins 1579
Exercise of authority regarded with jealousy &c
19 How 89 - [illegible]

SUPREME COURT OF THE UNITED STATES.

50

CHARLES FITZ, LIBELLANT AND APPELLANT,

vs.

THE GALLIOT AMELIE.

BRIEF FOR LIBELLANT AND APPELLANT.

SUPREME COURT OF THE UNITED STATES.

CHARLES FITZ, LIBELLANT AND APPELLANT,

vs.

THE GALLIOT AMELIE.

BRIEF OF LIBELLANT AND APPELLANT.

THE Libellant was the owner of goods of the value of $8,300, shipped on board this vessel, then called the Plata, at Surinam, to be delivered to him in Boston. The vessel sustained damage, put into Port au Prince, was surveyed and partially repaired at a cost of about $1,000, and then re-surveyed and ordered to be sold, and was purchased by the Claimant for $407, who repaired at a cost of $1,695, and sent it to Boston, with a cargo of logwood, which was delivered in perfect order. The master sold a part of the cargo for $2441 gold ~~$3,800, and appropriated the proceeds, in part to payment of the repairs made by him, and~~ for the proceeds ~~balance~~ has never accounted; the residue was forwarded to Boston in another vessel. On arrival in Boston the vessel was arrested at the suit of the Libellant, claiming a lien and damages for the non-delivery of the cargo, and was sold by order of Court. The purchaser made some slight repairs, took off her copper, which he sold for $1,157, and sent her to England with a full cargo. She was 40 days on the passage; had a good deal of bad weather; showed no symptoms of weakness, and appeared staunch and strong.

If there had been no sale, the vessel, owners and master would each be liable for the value of the cargo sold.

The Freeman, 18 Howard, 182. "On shipment of goods a lien is created on the vessel for the performance of the contract of affreightment."

Pope vs. Nickerson, 3 Story's Rep. 492. "On sale of cargo to make repairs a personal liability on the part of the owners, and a lien on the vessel and freight, arise immediately."

The Claimant however insists, that by the master's sale he acquired a good title free from all liens.

The Libellant insists that the sale was illegal and invalid; and if otherwise, did not affect his lien.

FIRST POINT.

The burden is on the purchaser throughout to maintain his title.

The Sarah Ann, 13 Peters, 401. "The power of the master to sell is secured from abuse by the limitations placed upon the exercise of it, and by the obligation of the purchaser, to maintain his ownership against the original owner by showing that the necessity for a sale had arisen."

Freeman vs. E. & I. Co. 5 B. & Ald. 617. "The purchaser, knowing that necessity alone can justify the sale, and give him a title to what he purchases, will assure himself that there is a real necessity for the sale before he makes the purchase, and caution on his part will prevent (what has too frequently occurred) the fraudulent sales of ships and cargoes in foreign ports."

What is such a necessity as will justify a master in making a sale is perhaps incapable of definition, but it seems to be well settled in what cases it does not exist.

FIRST.

If the vessel is not in immediate danger, and communication can be had with the owners before she will probably be lost, there is no necessity to sell.

The Sarah Ann, 13 Peters, 401. "The true criterion * * * is the inquiry whether the owners or insurers, when not distant from the scene of stranding, can by the earliest use of the ordinary means to convey intelligence be informed of the situation of the vessel in *time to direct the master before she will probably be lost.*

Marvin on wreck and salvage, Sections 14, 15. "If the vessel is, or may be put in a place of safety, and the owners or insurers may be informed, the master has no authority to sell it, *however much it may be damaged.*"

1 Parsons Merc. Law, 62. The master may sell if escape from destruction is little more than possible, and if delay to acquaint owners would probably cause a greater loss.

Hall vs. Franklin Ins. Co. 9 Pick. 478. "The master acts for the owners because they can have no opportunity to act for themselves. If the property could be kept safely until they could be consulted and have an opportunity in a reasonable time to exercise their own judgment * * * the *necessity* to act for them would cease." The vessel was in Key West, the owners in Boston, and it was in 1830, before the time of steam navigation, and when it would have taken thirty to forty days to have sent for and received orders. The sale was held invalid.

The Bonita, 1 Lush. Adm. Rep. 253. "Where there is a *possibility* of communicating with the owners without *destructive* consequences, I hold it to be the first duty of the master to communicate with his owner and await his instructions."

It is not even suggested by the answer, nor is there any proof that the vessel was so situated as to be in immediate danger from any cause. She did not leak. (See first survey, page 17.) She was in a safe harbor, her copper was very heavy and in perfect order, and in these days of steam navigation the master could have written to his owners in Amsterdam, and received their instructions probably in less than thirty days. According to these authorities he was bound to do so, and the sale was not of necessity. The burden is on the purchaser to show that there was no time for communication without danger of loss, and he does not attempt to do so.

SECOND.

If the master can by bottomry, sale of cargo, or otherwise procure funds to repair, the question of repairs is one of expediency, not of necessity, and he has no power to sell.

It has been much disputed whether the mere want of funds can be of itself a sufficient necessity to justify a sale by a master. 1 Parsons, Merch. Law, 63. But it is settled conclusively that, if the vessel can be repaired, and the master has or can procure funds, no legal necessity exists, and he has no authority to sell, however great the damage may be.

The Fanny and Elmira, Edwards Adm. Rep. 127, per Lord Stowell. "It must be shown, not only that the vessel was in want of repair, Pope vs. Nickerson, 3 Story's Rep. 492. "On sale of cargo to make repairs a personal liability on the part of the owners, and a lien on the vessel and freight, arise immediately."

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The Fanny and Elmira, Edwards Adm. Rep. 127, per Lord Stowell. "It must be shown, not only that the vessel was in want of repair, but likewise that it was *impossible* to procure the money for that purpose."

"If it was worth his (the purchaser's) while to repair, how does it appear that it was not equally fit to be done for the original owners?"

The Segredo, 1 Spinks, Ec. and Adm. Rep. 48. "If, for instance, the ship is capable of repair, and the master can raise money, either on the bottomry of the ship or cargo, then I conceive no legal necessity can exist for a sale. That I think will be quite clear." "The sale, though *bona fide*, and beneficial to the owner, will not avail without necessity." "I cannot bring myself to entertain a shadow of a doubt that where a ship is capable of repair, and where means exist by hypothecation, or otherwise, of paying for these repairs, no necessity, in the legal sense of the term, can be said to exist."

The Catherine, 1 Eng. Law and Eq. Rep. 682. "I do not find it to be denied that money might have been borrowed on bottomry for the purpose of bringing the vessel home. If money could have been borrowed, there is an end of the necessity, and it is clear the master has no authority to sell. This is not the law of England peculiarly, but is the maritime law of the whole world, and that for the protection of all owners against all ship-masters."

Post vs. Jones, 17 Howard, 158. The master has power to sell where the vessel is disabled, sunk or stranded, and where he has no means and can raise no funds to repair her so as to prosecute his voyage.

These authorities establish the rule that if the master has, or can procure funds to make repairs, there is no *necessity*. Whether to sell or not becomes a question of expediency, and he has no right to determine that. The burden is still on the purchaser to show that the master had not and could not procure funds, and he so alleges in the answer—but he does not prove it.

On the contrary, the admitted facts show, that he had ample means to make more than all the repairs recommended by the most extravagant estimate.

His cargo cost over $8,000 in Surinam. The highest estimate of repairs was $4,500; the actual cost of all the repairs made was only $2441 ~~$2,695~~. The master sold cargo to the amount of $3,800, not one half of its value, and had the residue of the cargo and the vessel on which, by sale or otherwise, to raise $700, the whole sum required to make repairs if they should cost $4,500.

The question is not whether it would have been for the interest of the owners to repair, or whether the vessel, if repaired, would be worth as much as the repairs would cost. These are questions of expediency, not of necessity.

The authorities cited establish the rule that if the vessel is capable of being repaired, and the master has, or can procure funds to make repairs, there is no *legal necessity* imposed on him, and consequently he has no power to sell.

That the vessel was capable of being repaired is shown by the fact that she was, that she was able to take a cargo to Boston, and afterwards to England, and was found to be staunch, strong and seaworthy.

That the master had funds, appears by the agreed statement, as just stated.

The vessel was capable of being repaired, the master had funds to pay for repairs. If there is any thing settled by the law, it is that under such circumstances, he is under no legal necessity, and has no power to sell: *a fortiori*, when the vessel was in safety and could remain so until the owner was advised.

THIRD.

If the vessel cannot be repaired at the port of disaster, or only at a cost which would exceed her value, and can be temporarily repaired, so as to be carried to a port where repairs can be made, the question whether to sell or not is one of expediency and not of necessity, and the master has no power to sell.

Hall vs. Franklin Ins. Co. 9 Pick. 478.
Bryant vs. Com. Ins. Co. 13 " 543.
Wilson vs. Miller, 2 Stark. 1.
Am. Ins. Co. vs. Center, 4 Wend. 52.
Freeman vs. East India Co., 5 Barn. and Ald. 617.

In this case the vessel was repaired at the port of disaster, at much less cost than her value—went to Boston, where only some slight repairs, costing in all $143, were made, and thence to Liverpool. See bills of repairs, p. 7, 8.

FOURTH.

If the master does not act in perfect good faith, the sale is void.

This is a question of fact, and the burden is on the purchaser to prove that he did.

The Sarah Ann, 13 Peters, 401.

There is no testimony bearing directly on this subject, but from his conduct fraud is to be inferred.

It does not appear that he had no funds of his owners, or could not procure them on their credit, or raise money on bottomry, before he proceeded to sell cargo.

The temporary repairs recommended by the first survey would have cost $800, and that was all that he required at first, yet he sold to the amount of $3,800.

Of this, it is alleged, although not proved, that about $1000 was expended for repairs; of the balance he has never rendered any account. The consignee paid the surveyor's fees and a small sum for wages, the balance was paid to the master, who appropriated it to his own use, and never accounted for it.

The master never advised the owners of the cargo of its sale, nor, so far as appears, the owners of the vessel.

He stole the larger part of the proceeds of the cargo, and having been guilty of this crime, it is not unreasonable to suppose that he acted in bad faith otherwise. The presumption is against him, and the burden on the purchaser to remove it, and he has not attempted it.

It is not necessary to impute bad faith to the purchaser, the present claimant; yet it must not be overlooked, that he had means of knowing that the master was not acting rightly.

He of course knew the condition of the vessel; that she did not need the repairs recommended by the surveyors—that the hull could be thoroughly repaired for $954—he knew that the master had sold much more of the cargo than he needed; he knew that the master had funds to repair, also that the vessel could be kept in perfect safety till the owners could be consulted, and that therefore there was no necessity and no right to sell. He consequently bought at his peril, and if the owner, or one having his right, chooses to dispute his title, he must yield.

FIFTH.

Independently of the other facts which take away all pretence of a legal necessity, it does not clearly appear that the actual condition of the ship was such as to render it expedient, much less necessary, to sell the vessel.

The burden is on the claimant to prove such necessity, and he produces the protest, surveys and depositions to prove it, and they make out a strong case : but it is not without difficulty or contradictions.

Take the description in the protest to be true, and it seems a miracle that the vessel did not founder at sea. Take the surveyor's reports and statements to be true, and it is plain that no man in his senses would think of repairing.

Yet it appears that the claimant thought otherwise, that he made all the repairs required on the hull, not temporary but permanent, for less than $1000—that she then took a full cargo to Boston, and delivered it in good order—that the cost of all the additional repairs made in Boston was $143—and that afterwards she took in a full cargo for Liverpool, had forty days passage, with much bad weather, and proved "*strong, staunch and seaworthy.*" (See record, page 30)

It seems impossible to reconcile the statements in the protest and surveys with these uncontradicted facts, and with the appearance of the vessel at Boston, as described by Capt. Gifford, who examined her, inside and out, and when she was out of water. See his deposition on pages 23 to 26, especially the answers to Ints. 4, 5, 8, 9, 11.

It is not necessary for the Libt. to attempt this. The burden is on the Claimant to prove the necessity arising from the state of the vessel, (if that makes a legal necessity,) beyond a doubt, and if he does not, and leaves it uncertain, he fails to prove his case.

In this case the facts show that the sale was not even expedient, for the vessel was capable of being repaired at a cost less than half her value, permanent repairs could be and were made at Port au Prince, and the master received from sale of the cargo one third more than they cost.

SIXTH.

It has been sometimes supposed that if the repairs would cost so much as would authorize an abandonment to insurers, the necessity which justifies a sale exists.

But for this there does not seem to be a foundation in principle or authority.

The cost of repairs is an essential element when combined with inability to wait for orders without danger of destruction, or to procure funds. But when these do not exist, no case can be found in which the mere cost of repairs (if the vessel is capable of being repaired) has been considered as making a case of necessity. It is a question of expediency only.

There is no analogy between the power of the master to sell, and that of the owner to abandon to his insurer. It is a part of the contract of insurance, that if repairs cost more than the value, or half the value of the vessel, the owner may abandon, and thereby transfer the vessel to the insurer; but the same facts do not authorize the master to sell.

Abbott on Shipping, page 17, "The propriety of a master's conduct in the sale of his ship, and the liability of insurers on their contract, are questions perfectly distinct."

Idle vs. The Royal Exchange, 8 Taunt. 755, per Dallas, C. J., after considering the power of the master to sell as against his owner, says, "I come to the question between the insurer and the insured, which I conceive to stand on principles essentially different."

Where the actual necessity justifies a sale there is no need of an abandonment to recover a total loss; if on grounds of expediency, such as mere cost of repairs, one must be made to support such a claim.

Gordon vs. M. F. and M. Ins. Co., 2 Pick. 249.

SEVENTH.

It seems to be well settled that it is not sufficient to show that the master acted in good faith, and for the interest of all concerned, and that a sale was beneficial and expedient. Besides that, a legal necessity must appear.

The Tilton, 5 Mason, 476. "As between the owner and a purchaser at a sale the title of the former is not devested unless such necessity exists, notwithstanding the master may have acted with entire good faith and in the exercise of a sound and honest discretion."

The Bonita, Lushington's Rep. 261. "It is not sufficient that such a sale is *bona fide*, and for the benefit of all concerned, unless it also be shown that there was an urgent necessity for a sale, and the proof of this necessity lies upon the purchaser."

See also Post vs. Jones, 19 Howard, 150.

If the vessel is capable of being repaired, and the master has means or can communicate with his owners, the estimated cost of repairs has never been considered of itself as giving him power to sell.

If the cost is very great it is a fact to be considered in connection with other circumstances.

In this case, if the vessel had actually needed the repairs recommended by the surveyors to cost $4,500, it would have presented a question of expediency, which the master had no right to decide, because the vessel was in safety, and he could advise his owner and await his instructions, and because he had funds.

A fortiori when it is proved by the facts that much less than half that sum was required to repair her thoroughly and permanently.

The advice of the surveyors did not authorize the master to sell, especially as they were so grossly mistaken or deceived as to the possibility of making thorough repairs at Port au Prince, and their actual cost.

Yet it is the only fact in the case by which his conduct can be justified or the sale supported.

It is demonstrated that the vessel did not need half the repairs they advised, and that men and materials could be there obtained on the spot to make a thorough repair; it is not denied that the vessel was in a place of safety, and could await owner's orders; it is admitted that the master had ample funds from sale of cargo, and that he never accounted for them.

So that the only fact in his favor is, that the surveyors advised him that repairs would cost much more and recommended a sale.

This alone did not empower him to sell, if the survey and estimate had been correct, but they being shown to be erroneous and extravagant, fails altogether to help the sale.

The Libellant submits that it is proved that the vessel was in safety, and could remain so until the owners were advised; that the master had funds to repair; that repairs could be made at the port of necessity for less than the value of the vessel;—and that the master did not act in good faith.

According to the principles established by this Court in the case of the "Sarah Ann," there was no such necessity as would authorize the master to sell, and the purchaser acquired no title.

SECOND POINT.

If the circumstances had been such as to justify a sale and pass the title to the vendee, he took the vessel subject to all existing liens.

The Claimant insists that the sale not only passed the owner's interest, but had the effect of a decree of a Court of Admiralty rendered in an adverse suit *in rem*, and devested all liens.

Vessels, unlike other chattels, are subject to various maritime liens, not requiring possession, necessarily secret, and not obvious to strangers, yet protected from reasons of policy in all maritime States. Such are the liens created by bottomry, for repairs in a foreign port on the credit of the ship, of the owner of the cargo for its safe transportation and delivery, of the salvor, of the sailor for wages, of material men, the lien caused by a tortious collision, and others, all recognized by law, essential to the interest of commerce, constantly enforced by Courts of Admiralty, the existence of any of which is never apparent, and not always known to the master and owners, and therefore not to be learned by inquiry: valuable rights, and yet it is said that if the master of the vessel sells, he destroys them all!

There is no analogy between a decree of a Court of Admiralty and the act of a master in making a sale.

In the one case notice is given to all the world, any person interested has the right to appear, and in case of sale the proceeds are paid into Court for the benefit of all concerned. In the other no notice is given to any one, unless by the advertisement of a sale at auction, no one has the right or power to interfere, and the proceeds are paid to the master, who, as in this case, may appropriate them to his own use.

It is obvious what frauds the establishment of such a rule would encourage, and what temptations to make fraudulent sales would be opened. The policy of the law is to discourage sales by the master, but this would afford every inducement to make them, if thereby he could defeat bottomry and other liens. But it is believed to be settled that the master's sale has no such effect.

In making a sale the master acts as the agent of the owner, because he cannot act for himself. If the vessel was in her home port, or the owner present in the port of distress, there would be no necessity for the master to act, and he would have no power to sell.

1 Parsons, Mar. Law, 65. The master, in making a sale, "does so as the agent of the owners, and binds them by his acts and words in the same manner that he would if otherwise authorized to make the sale."

Woods vs. Clark, 24 Pick. 39. "There is no foundation for the distinction between an agency created by operation of law and one created by the direct acts of the parties. In both cases the source of the authority is the principal. When the agency grows out of the relation of the parties, and is called into action by some unlooked-for contingency, it is the principal who creates the relation and assents to all its legal incidents, and thus confers the power upon the agent to perform all such acts as in any event the law or his duty may require of him."

The settled rule that the master cannot sell vessel or cargo, if they are in safety and he can communicate with the owners, shows conclusively that he is their agent and nothing more.

Freeman vs. E. I. Co. 5 B. & Ald. 617.
Bryant vs. Com. Ins. Co. 13 Pick. 543.
Pope vs. Nickerson. 3 Story, 465.

The master, being the agent of the owner, cannot do more than the owner could if he were present. Otherwise the absurd conclusion follows, that an agent can exercise a power which his principal does not possess.

If the owner sells his vessel in a port of disaster, or in a home port, because he does not consider it expedient to make repairs, it would not be asserted that thereby he devested all liens, and conveyed a perfect title to the vendee.

If he, the principal, could not do this, it necessarily follows that the master, his agent, cannot.

It may be suggested that in cases of necessity the master becomes the agent of "*all concerned*," and that that phrase embraces lienholders. But on examining the cases it will be found that that refers only to the owners of the vessel and cargo, and their respective insurers. The insurer, assuming certain risques, is to that extent substituted for, or identified with the owner, and necessarily is bound by the acts of the master, as the owner would be if not insured; for, as Lord Mansfield expresses it, "this is within his contract of indemnity."

But he does not become the agent of the lender on bottomry, the sailor, the salvor, or others having liens *in rem;* and there is no decision and no authority by which it has ever been held or intimated that a sale by a master or owner to a *bona fide* purchaser could devest an existing lien, unless there had been *laches*. On the contrary, it has been repeatedly decided, and must be considered as conclusively settled, that such lien is not affected thereby.

The Rebecca, Ware's Rep. 188, p. 212. Sale by owner. Held that the lien of a shipper for damage was not devested by a sale to a *bona fide* purchaser. The Eliza Jane, Sprague's Reports, 152. Tacit lien for necessaries will be valid against *bona fide* purchasers.

The Europa, 8 Law Times, 368. Sale by owner. Held that a lien for damage by collision is not defeated by a sale to a *bona fide* purchaser without notice.

The Catherine, 1 Eng. Law and Eq. Rep. 679. Sale by *master*, in port of distress, held not to devest lien of a lender on bottomry. Dr. Lushington says, "I think that a British vessel coming into a foreign port cannot be sold by the master, so as to * * * extinguish all mortgage claims and liens on bottomry or wages, even in a case of necessity." * * * * "It is the duty of foreign purchasers to open their eyes and to take care what kind of a bargain they make, that they guard themselves against liens which adhere to the ship."

The Nymph, Swabey's Rep. 87. It is said, "Those who purchase ships stand in a different position from those who purchase other articles: for where a man purchases a ship, he takes it with all the liabilities that attach to it in law, and if he would protect himself against those liabilities, he must do so by a guarantee or some other mode, that he may not be injured by latent demands. If the ship be sold, she is always subject to any demand for seamen's wages, * * * to a bottomry bond and to a demand for salvage; then it becomes the duty of those who purchase ships to take care with whom they deal."

These authorities settle the point, that a maritime lien is not displaced by a sale to a *bona fide* purchaser without notice, whether made by the owner or the master as his agent.

But the Claimant does not stand in this position. It is not necessary to impute fraud or collusion with the master. It is enough that he had knowledge of the facts of the case, that the statement of damages and cost of repairs were grossly exaggerated, that the master had sold a large part of the cargo, and had more than sufficient means to make all repairs required, and could communicate with his owner and await his instructions in safety, and that the price he paid ($407) was hardly one-third of the value of the copper, which was taken off and sold for $1,157.

Says Dr. Lushington in a similar case, where there was a sale by a master, and a similar discrepancy between the Surveyor's reports and estimates, and the actual cost of repairs. "It is enough to say that the defendant must be presumed to have known the caution which he was bound to exercise in making a purchase of a British ship from the master, acting without authority from the owner, and that he neglected to use any such caution."

The Bonita, Lushington's Rep. 264.

It may be argued that the master must possess the power to devest liens, when he sells in a case of necessity, because otherwise no prudent person would buy. But this proves too much. The same reason (possibility of existing liens) would prevent a prudent person from purchasing of an owner at any time.

The purchaser is bound to know, so far as the owner is concerned, that there is a necessity to sell, and that the master acts in good faith. As to the claims of other persons on the vessel, he takes the risque of them.

"The rule is *caveat emptor* as to all legal liens on ships."

THIRD POINT.

The Claimant never acquired a valid legal title to this vessel, and has therefore no standing in Court.

He alleges in his answer, and it is admitted, that the vessel was struck off to him at auction, and that he afterwards took possession; but it is no where alleged or proved that the master executed a bill of sale in his own name, or that of the owner. If by the general maritime law a bill of sale is necessary to transfer the title, then the Claimant has none. It is for him to sustain his claim and title.

The Sisters, 5 C. Rob. 159, pr. Sir W. Scott. "A bill of sale is the proper title to which the Maritime Courts of all countries would look. It is the universal instrument of transfer of ships in the usage of all maritime countries; and in no degree a peculiar title deed or conveyance known only to the laws of England. It is what the Maritime Law expects, what the Court of Admiralty would in its ordinary practice always require." In another case he says, "that ships pass by formal instruments and written documents, and therefore do not come entirely under the rules that apply to the transfer of moveable property." In another, "It is a well known rule of interpretation, that ships being property of a peculiar description, do not pass under general terms." 4 C. Rob. 398. See also the Welvaart, 1 C. Rob. 122.

The Segredo, 1 Spinks, Ec. & Adm. Rep. 46, per Dr. Lushington. "Now, by the laws, I take it to be a principle quite incapable of being disputed, that ships in general cannot be sold save by an instrument in writing; and it is equally clear that such instrument in writing must proceed either from the owners, or some persons authorized to act and acting as their agents, or else by the decree of a competent Court."

Atkinson vs. Mallory, 2 Term Rep. 466, per Grose, J. "A person by being in possession of a ship, does not thereby acquire any credit; because, whoever is requested to advance money thereon, will require to be shown how the other is owner; and if he has no bill of sale to produce, his possession alone amounts to nothing. Therefore it has been invariably held that the delivery of the grand bill of sale is a delivery of the ship itself."

Ex parte Halkett, 19 Vesey, 495, per Lord Eldon. "It is laid down that the ship may be bound by bill of sale; but it cannot be by parol."

It seems to be established by decisions in Admiralty, Equity, and at Law, in England, that, independently of the Statute, a bill of sale is necessary to transfer the title to a ship.

This is also the general maritime law. Jacobsen's Sea Laws, p. 21. "At all times the property in vessels was only to be known by such written evidence, as is not required of other moveable property."

The legislation of the United States seems to assume that vessels can be transferred only by an instrument in writing. Stat. 1789, ch. 11, S. 11, enacts that whenever a vessel is sold, the certificate of registry shall be recited "*in the instrument of transfer or sale.*"

And the necessity of one is recognized by some of the elementary writers in this country, and by its Courts of Admiralty; though in certain State Courts it has been held that a ship may be transferred like any other chattel.

3 Kent's Com. 186. "The title to a ship, acquired by purchase, passes by writing. A bill of sale is the true and proper muniment of title to a ship, and one which the *maritime* courts of all nations will look for, and in their ordinary practice require.

Weston vs. Penniman, 1 Mason, 300, per Story, J. "A bill of sale is necessary to pass the title of a ship; but this does not depend on any enactment peculiar to our municipal laws, but grows out of the general maritime law, which requires such a document as the proper muniment of the title of a ship."

Ohl. vs. Eagle Ins. Co. 4 Mason, 172, per Story, J. "I think that a title to a ship cannot pass by parol when she is sold to a purchaser. The general maritime law requires a ship to have some written documents of ownership, and there is nothing in our jurisprudence which dispenses with such a written instrument of transfer."

Lord Stowell, Dr. Lushington, Mr. Jacobsen, Ch. Kent and Judge Story agree that by the maritime law of all nations a bill of sale is necessary to pass the title to a ship; it has been so decided in the Admiralty Courts of England and this country; and it is said that there is no case at Law in England in which the contrary is held.

The Claimant does not allege or prove that one was made to him. This suit was brought in May, 1862, and the objection was taken early in the District Court, so that he has had ample time to amend his answer and prove his bill of sale if he had one.

He has not done so, and the presumption is conclusive that he never had one. He has therefore no standing in Court, and no right to dispute our lien.

FOURTH POINT.

The Claimant insists that, if from any cause his title is defective, he is to be reimbursed for the money he expended at Port au Prince to make the vessel seaworthy, *i. e.* to MELIORATIONS.

If he never had any title to the ship, because the master had no power to sell, or for the want of a bill of sale, then it would seem that no such claim could be maintained, because if one person chooses to spend money on a chattel belonging to another, neither law or equity will create a contract to indemnify him.

Hunter vs. Parker, 7 Meeson & Welsby, 322.
Ridgway vs. Roberts, 4 Hare's Ch. Rep. 106.

The only case in which this question would arise is, assuming that the sale was legal and valid and passed the title, subject to the Libellant's lien, as against him, has the Claimant the right to claim *meliorations ?*

Before proceeding to consider the Claimant's right, it is material to remark, that the Libellant has a prior right.

It appears that before the sale the master expended about $1,000 in repairs, and that he obtained the means to pay for them by selling part of the cargo. By this sale and appropriation a lien was created on the vessel—and (if there is such a thing as a claim for meliorations in Admiralty on the instance side) the Libellant, to the extent of the sum so expended out of the cargo, is entitled to a prior lien.

The authority relied on in support of this claim is a dictum of Mr. Justice Story in a case where the question was not raised, had not been argued by counsel, was not decided by the Court, and on appeal was ignored, and when there was no doubt that the sale was of necessity, and that the master and buyer acted in perfect good faith.

In the case of the Sarah Ann, 2 Sumner, 220, Judge Story uses this language:

"This is the case of a clear *bona fide* purchase, under circumstances calling for no inconsiderable indulgence, even if the strict law had been against the title. *The general practice of the Admiralty in all such cases is, to restore possession upon making compensation for all meliorations by the purchaser. It is an equitable principle, analogous to that which is constantly acted upon in Courts of Equity.*" "Where the transaction is tainted with fraud or ill faith, the rule would be different."

Considering how the law is here laid down, it is a singular fact, that in no case at Law or Equity, or in Admiralty, had a claim for meliorations been allowed, under circumstances like the present, and in no case had one been allowed on the instance side of the Court.

The learned Judge cites the prize cases of the Perseverance, 2 Robinson, 239, and Nostra de Conciecas, 5 Rob. 294.

But the eminent Judge who decided those cases himself distinguishes them from one like the present.

In the case of the Fanny and Elmira, Edwards, 117, they were cited in support of the claim of a purchaser at a master's sale for reimbursement of expenses, &c., but Lord Stowell does not admit their authority to that effect; he says, "those were *bona fide* purchasers under a title which the neutral thought to be good (the decree of a prize Court), which was afterwards disallowed *upon a principle of Law which was latent to him*," not upon a matter of fact which could be determined by inquiry.

Hunter vs. Parker, 7 Meeson and Welsby, 322. In this case the owner of a vessel, sold by the master, and repaired by the purchaser, brought an action of Trover. It was held that if the sale were not necessary, the purchaser would have no lien for the cost of repairs made by him.

Ridgway vs. Roberts, 4 Hare's Ch. Reports, 106. A vessel had been sold by the master, repaired by the purchaser, and afterwards claimed by the owner.

The purchaser sought relief in equity, asking first for confirmation of sale, and if that should be denied, that he should be allowed for the repairs made by him. Both were denied. The Court say—"according to the defendant's case the plaintiffs purchased without a title, and have been gratuitously expending their money upon a chattel which is not their property. If that be so, a Court of Equity cannot give them a lien. There is no such equity in the absence of a contract."

This decision was afterwards reconsidered and reaffirmed.

No such claim therefore is allowed at Law or in Equity.

The Fanny and Elmira, Edwards, 120. Case of a sale by a master. Held that the sale was unnecessary, and that the purchaser could not claim reimbursement of his expenses.

There the purchaser stood on stronger grounds than the present Claimant, because he asserted his claim against the original owner. Here it is made against the holder of a prior maritime lien.

The Catherine, 1 Eng. Law and Eq. 679. Vessel sold by master, repaired by purchaser at great expense. Holder of a prior bottomry bond libelled and obtained a decree.

Meliorations were not even asked for. This case is directly in point.

The Segredo, 1 Spinks, 36. Vessel sold by master in good faith but without necessity, restored to owner. Purchaser had expended large sums in repairs.

No claim made for meliorations.

The Bonita, 5 Law Times, 140, 1 Lushington, 233. Similar case; meliorations not claimed.

The Empress, Swabey, 160. Vessel sold without authority, and claimed by owner. After the sale she was mortgaged and also bottomried. Held that the original owner was entitled.

No claim for meliorations.

Harmer vs. Bell, 22 Eng. Law and Eq. 62. Libellant asserted lien for damage by collision against vessel in hands of a *bona fide* purchaser, and obtained a decree.

No claim for meliorations.

The Fanny and Elmira, and Ridgway vs. Roberts, 4 Hare, are the only cases in which a claim for meliorations has been made, and in both it was denied.

The other cases above cited, in which no such claim was made, are also authorities against it. It cannot be supposed that the question was overlooked. The law was considered so conclusively settled that it was not deemed worth while to raise it.

The *dictum* of Judge Story, which was not noticed by the Supreme Court on appeal, so far from being sustained by decisions in Courts of Equity and Admiralty, has been denied in both.

It may therefore be considered as conclusively settled, that when a vessel is sold without authority, and is reclaimed by the owner, the purchaser will not be entitled to be reimbursed for the expenses of repairs, even where the purchaser acted in good faith.

SECOND.

If such a claim could be asserted against an owner it does not follow that it could be against the holder of a maritime lien.

A person claiming a lien for damage, like this Libellant, is a forced and involuntary creditor of the vessel. It may be, as it is in this case, the only thing to which he can look for indemnity. He has no option or alternative. On the other hand, the purchaser acted voluntarily—he was not obliged to buy—did so only for gain; knew that the vessel might be subject to liens, and took the risque of them.

There is then no equity in his behalf as against a prior creditor of the vessel.

THIRD.

If under any circumstances such a claim could be maintained, it will be admittted that it cannot be if there is any suspicion of want of good faith on the part of the purchaser, or if he knew or had reason to suspect the existence of prior liens, or the master's want of power to sell.

It is not necessary to impute actual bad faith to the Claimant, it is sufficient that he knew or might have ascertained the facts in the case. He knew, or might have known, that the vessel with a valuable cargo put into Port au Prince in distress; that she was first ordered to be repaired—that to pay for repairs the master sold a large part of the cargo—that the vessel was bound for the safe delivery of the cargo, perils of the seas excepted—that immediately on the sale of the cargo a lien was created on the vessel in favor of its owner. He knew that the Surveyors were mistaken in advising that the vessel could not be repaired there—he knew that the price he paid was hardly one-third of the value of the copper on her bottom—he knew that there was ample time and opportunity for the master to advise the owners of the vessel and cargo, and that in the meantime the vessel could lay there in safety, being not leaky, and with little expense or deterioration—he knew that the master had funds to make repairs.

Knowing or having the means of learning all these facts, and of the conclusion therefrom, that the master had no legal right to sell the vessel, and that the owner of the cargo had a lien upon it for the amount sold, it is impossible for him to set up the title of a *bona fide* purchaser, for a valuable consideration without notice.

The Libellant respectfully submits that the decree of the Circuit Court should be reversed and one rendered in his favor—because the master had no power to sell, because the sale could not affect a prior maritime lien, and because the Claimant has no legal title.

F. C. LORING,
PROCTOR.

Supreme Court of the United Stat

No. 92 ~~[illegible]~~.

CHARLES FITZ,

Libellant and Appellant,

vs.

E
THE GALIOT "AMELIA."

BRIEF FOR B. RIVIERE,

Claimant and Appellee.

[illegible] SCHOOL STREET.

Supreme Court of the United States.

DECEMBER TERM, 1866.

CHARLES FITZ, LIBELLANT AND APPELLANT,

vs.

THE GALIOT "AMELIE."

BRIEF FOR RIVIERE, CLAIMANT AND APPELLEE.

In the record, the claims of material men are set forth; the case, however, comes before this Court solely on the claim of Riviere as owner of the vessel by purchase at Port au Prince.

Statement of Evidence.

On the 16th of March, 1862, the "Plata" (afterwards the "Amelie") sailed from Surinam for Boston, with a cargo of molasses, sugar, and sixteen pieces of old copper belonging to the libellants. Early in April, the vessel met with a series of storms and high seas, which came on deck, but did not get below. On April 10th and 11th, she was tossed about by a fearful hurricane and a "terrific" sea, during which she was struck by lightning, and the sea ran so high as to "carry away her brig sail." At a quarter before twelve, a heavy sea came on board and stove the large boat and water casks, and threw the vessel upon her beam-ends, causing the cargo under deck to break loose and roll to larboard, and the vessel to spring a dangerous leak. At twelve o'clock there were eighteen inches of water in the vessel; at twelve and one-half o'clock, though all hands were at the pumps, there were three feet of water in the hold; and at one, four feet. It was found that the larboard side of the vessel from the fore to the main shrouds was all loose, and the water pouring in. By good seamanship, the vessel was made to bring the wind on the other side, and her starboard was pressed into the water, and her larboard side raised up. By putting all the crew to the pumps, and stopping the leaks, the water was finally pumped out of her. To preserve the ship and cargo during the storm, about thirty casks of molasses were thrown overboard, and some were also stove in the hold; other casks were injured by the sea. The vessel was so much injured that the master was obliged to make for the nearest port. He attempted to put into Bermuda, but as the ship could only be sailed with the wind on the larboard side, he was obliged to change his course, owing to unfavorable winds, first to St. Thomas, and, afterwards, to Port au Prince. The working of the ship had been such during the bad weather, that, in the words of the protest, "they gave up all hope of deliverance;" but finally deliverance came.

See Protest, pages 15 and 16 of Record.

The "Plata" arrived on the afternoon of the 25th April. On the next day, the 26th, the first survey was held by two masters of vessels appointed by the Dutch Consul. They only examined the outside of the vessel; found much damage there; and reported accordingly.

On the 6th of May the cargo had been taken out and the second survey was held: on this survey were two masters of vessels, the head of the ship-yard, the agent of the New York underwriters, and Lloyd's agent; there could not be a more competent board. The deposition of one of the masters (Charles F. Teel), is in the case, who had made twenty-five voyages to Port au Prince. They reported the outside injured in the same manner that the first survey had,—the gunwale started from the deck the entire length of the ship, gunwale plank split, some of the bulwarks and rail gone, deck and hatchway seams open, bolts started, and longboat and house injured. The fore-channel plates outside were either entirely broken or injured, and the top outside plank badly split, and her top sides badly shaken. In the hold they found several knees on the larboard side split, and hogsheads of molasses empty, casks of sugar partially empty, and the sugar remaining damaged by salt water. The survey recommended new knees put in, and planks and other repairs which they estimated would cost 10,000 Haytien dollars, and take from twenty-five to thirty days. They said that permanent repairs could not be made at Port au Prince, but the repairs recommended would be sufficient to take the vessel to Boston.

See 2d Survey, p. 17.

In making these temporary repairs, some of the side planks were taken off, and the timbers of the vessel were then first made visible, and were found to be broken on the larboard side: the damage was of such a startling character that another survey was ordered by the Dutch Consul. Twelve of the side timbers on the larboard side were found to be entirely broken and would have to be replaced by new; three more of and the heavy side planking on the larboard quarter split and broken necessary to be replaced: the stern-post of the vessel broken, so that to repair it they would be obliged to unship the rudder. The surveyors state at length what the vessel would require, and that there are no docks, no competent ship carpenters, and workmen, and no proper materials at Port au Prince, and consequently that it is not possible to make the necessary repairs in that port in a proper manner. They further report that if materials could be obtained, the time taken would be not less than four months, and would cost more than the vessel would be worth after the repairs were made. The surveyors, for this reason, advise the sale of the brig for the interest of all concerned, and the transhipment of the cargo to Boston.

The survey had upon it the agent of the New York underwriters, Lloyd's agent, who were also on the second survey, and three masters of vessels. The deposition of one of these (Alderson), who was carefully examined, and who had been four or five times to Port au Prince, is in the case. He was in the same gale as the "La Plata," and confirms the account of the severity of the weather.

See 3d Survey, pp. 19–20.

The vessel was sold, under the advice of the surveyors, June 12, for $407 in gold.

The surveys were very carefully made, the second survey occupying two hours in the examination, and the third, or last, half a day. The reports were full and particular.

Page 27, deposition Chas. F. Teel, 5th answer.
" 31, " Andrew B. Alderson, 6th answer.

After the purchase of the vessel by Riviere, he repaired her, at a cost in gold of $1,695.31 (see bills on page 22 and 23), not including any charge for superintendence, master's wages, or the costs of additional sails.

The sale was made June 12, and the vessel did not sail for Boston till during the month of September. To make sound, temporary repairs, it was necessary to put in twelve new side timbers between the forerigging and amidships and three heavy side planks on the port quarter, and to unship the rudder and repair the stern-post.

Last survey, p. 19.

Alderson's deposition, 7th, 8th and 27th answers, pp. 31, 32.

Besides this, she required many other repairs.

See 27th int. and answer.

Instead of being even properly repaired for a temporary voyage to Boston, Riviere put screw bolts running through her outward plank, her timbers, and inside planking, and set them up by nuts inside. This was a cheap, but not a safe mode of repair. Her stern-post was not repaired.

Jos. Ladd's statement of condition in Boston, page 35, eleven lines from bottom and two lines from bottom.

The repairs that were made were: three planks in her port side, old channels repaired, main and upper rail renewed in part, new deck plank, and vessel recalked.

Jos. Ladd's statement, page 35.

She had also new chain plates and six iron knees put in.

E. Horton's bill, pp. 20 and 21.

With these imperfect repairs the vessel came to Boston. In Boston she was sold without her inside planking being removed, so that the broken timbers were not seen.

Ladd's statement, p. 36.

N. P. Mann, the consignee in Boston (page 34) says *he did not think her worth putting on the repairs proposed.* This was after her arrival in Boston, and when so much had already been expended on her. Her copper was then taken off and sold, which, if she had been intended to be run, would not have been done. With some repairs — their witness does not state what — and, as far as the testimony goes, without that vital part, her stern-post, being repaired, she is sent to Liverpool in this unsafe condition, and fortunately arrives. The appellants' witness then leaves her, and does not state what was done with her.

Sharp's testimony, p. 30.

The appellants have attempted, by the testimony of Gifford, page 23, to show that the vessel could not have been injured as described in the surveys.

Gifford only saw the vessel in Boston, months after she was repaired at Port au Prince, and when she had been repainted.

Ladd's statement, p. 35.

Gifford, owing to age, or want of memory, or for some reason, testifies incorrectly in almost every particular.

In matters incidental, though of utmost importance, he says, they put in a new foremast and windlass (6th int., 24th page). Ladd, the carpenter, who did the repairs, (page 36,) says *no new* foremast or windlass put in.

To second interrogatory, Gifford says her repairs were one new plank, on larboard side, and probably two iron knees; "could not discover anything else myself, outside or in."

Ladd says (page 35) three planks on larboard side, old channels repaired; some new pieces put in; main and upper rail had been renewed in part; (Alderson, int. 25, page 32, says they were a solid wall, same as hull, not made as our vessels are,) some of the waist boards had been repaired; pieces of deck plank put in; vessel calked, and bolts put through her. E. Horton's bill of repairs on her contains 6 iron knees (page 21).

The surveys, and bills, and Ladd, confirm each other in every respect.

If Gifford is correct, all the other witnesses have testified falsely. There were no less than ten different persons on the surveys. The depositions of two are taken at length. Five persons also sign the protest, which describe the same injuries. Gifford alone contradicts every one of these witnesses, in toto.

Walter Sharp's testimony amounts to nothing; he was only on vessel after the Marshal's sale, and does not state what the repairs had been; only testifies to her performing her voyage well.

In cases of appeal, where both courts below have decided for the Appellee, the Appellant has all the presumptions against him, and the burden of proof is on him to show affirmatively, that an error has been committed.

The ship Marcellus, 1 Black, 414.

This vessel was owned in Holland. Port au Prince, into which she put in distress, is a small port, without docks or any trade of importance. At a great distance from her owners, with then no direct communication even with the United States, the master had no funds, except what he could raise by selling cargo. It would have been the height of folly for him to detain his vessel for months to consult with owners, who lived in Holland. With the advice he had, he had no alternative but to sell.

There was every reason to believe her copper displaced, and exposing her to immediate destruction by worms, as the last survey reported (page 19) that, on moving the hand below the water on the copper, it was found bulged out in several places.

I.

There is no question, that, where the necessity arises, the master has a right to sell.

This, though questioned once by some of the English Courts, is now universally admitted there, and has never been doubted here.

What the necessity is that justifies a master in selling his vessel has been often laid down in general terms; there is a great deal of general statement about the degree of necessity, as if it were necessary to impress masters of vessels as to the great responsibility upon them in forming a decision.

In many of the earlier and some of the later cases it is said to be the most urgent necessity, a necessity that admits of no alternative, and though not a physical, yet a moral necessity. There has been gradually an evident change as to the extent of the necessity required. And though the language used is often extravagant, it is softened and explained away by the definition and explanations given.

Parsons, who has recently written on this subject, says, in Vol. 1, Maritime Law, 59, at commencement of § 3, — "A sale of a ship is frequently made by the master; and, if this is justified by necessity, it is valid." On 60th page, he says, "Master must act with good faith and with the exercise of a sound discretion"; on 61st page, "Validity of sale is not to be judged of by the event." He says a good deal about the urgent necessity, but he does not, nor do any of the writers, attempt to give a clear and distinct rule as to what this necessity must be.

We shall have to resort to the cases for the principle. In 13 Peters, 387, New Eng. Ins. Co. *vs.* "Sarah Ann," Judge Wayne held (p. 400), that to make the sale valid the master must act in good faith, exercise his best discretion for the benefit of all concerned, and that the sale can only be done upon the compulsion of a necessity to be determined in each case by the actual and impending peril (p. 401). The necessity cannot be denied when the loss was probable, though afterwards the vessel was extricated without great injury or incurring great expense.

In 4 C. & P. 276, Somes *vs.* Sugure, Tindal, C. J. says, "A great deal has been said about the word necessity. Undoubtedly it is not to be confined to, or so strictly taken, as it is in its ordinary acceptation. There can, in such a case, be neither a legal necessity, nor a physical necessity, and therefore it must mean a moral necessity; and the question will be whether the circumstance were such, that a person of a prudent and sound mind could have a doubt as to the course he ought to pursue. The point principally for consideration will be, *the expenditure necessary to put the ship into a condition to bring home the cargo*; *the means of performing the repairs, and the comparison* between those two things and the subject matter which was at stake.

In Gordon *vs.* Mass. F. & M. Ins. Co. 2 Pick. on page 264, if the master calls *a competent survey and they think the expense of repairing more than the vessel is worth when repaired and advise "for interest of all concerned to sell" in such case a moral necessity is imposed upon Captain to sell*; the only alternative left for him is to pursue the advice of a body of men who by usage of trade have been immemorially resorted to on such occasions.

There seems to have been no attempt in the decided cases to state what these necessities are, except that in the decision given in this case in the Circuit Court (See opinion, Clifford, Judge). After a very careful examination of the law here and the old law of England, its modification and many of the decisions in both countries, the learned Judge says. "Perhaps it is not possible to devise any rule which will apply to all cases, but it is believed some approximation may be made in that direction."

See Opinion of Circ. Ct.

Practically upon examining the decisions it will be found that whenever the case arises that it is evidently best for all concerned, owners of vessel and cargo, to have the vessel sold, that in all such cases the sale has been justified by the Court. The fact that it is for the interest of all concerned to have the vessel sold has been always held as the urgent, or as it is often termed, the moral necessity that justifies the sale. If the master has any right at all to sell, his right is not to be restricted to the extreme cases of selling where a few planks only remain, or the vessel is in such peril that the next storm will certainly destroy her; there is no reason for limiting his right short of what is the evident and clear interest of all concerned. Certainly the necessity to sell exists as much where it is clearly injurious to owners of vessel and cargo to repair the vessel and send her on, as where a few dollars can be saved by selling a few planks or a vessel in such peril that she is all but worthless.

Parsons, page 62, Vol. I., Maritime Law, considers that if a prudent owner, if present, would have sold; that sale under such circumstances would justify the master.

So in Somes *vs.* Segure, before cited, Tindal, C. J., if a prudent owner or an agent of underwriters would have sold, the master should.

Even Dr. Lushington in the Australian, 1 Swabey, 484, after indulging in his remarks about urgent necessity, says, "the necessity is not an absolute impossibility of getting repair, if repair cannot be done except at so certain a loss, no *prudent man* would venture to encounter it, that constitutes a necessity."

Now, this doctrine of prudent owner or man is this, that when repairs cost more than the vessel will be worth when repaired, there is a necessity to sell, for no prudent man ever knowingly repairs his vessel when the vessel will be worth less than it costs him to repair; that is, he does not repair his vessel for the purpose of losing money by it.

It is submitted,

1. That this necessity has always been held to exist when a vessel is injured by perils of the sea to such an extent that the cost of repairs would be more than her value when repaired and arrived at her port of destination, and

2. That if, in the opinion of those best competent to judge, the vessel so injured is not worth repairing, and the master acting in good faith, and after careful investigation and conference, upon that opinion sells his vessel, he is justified in so doing, though it afterwards turns out that the opinion was incorrect, and the vessel could have been repaired at less cost and less than her value when repaired.

As to the first proposition, it would be a most grievous burden on ship owners to compel them to repair a vessel at greater cost than her value when repaired. It would benefit no one and might be the ruin of the owners of the vessel and cargo. In *cases like this*, where the master has no funds of his owners, or means to raise funds, except by sale of cargo, it would be ruinous to the owners of the cargo, who, by recent laws, can only look to their lien on the ship to be reimbursed, to sell their cargo and invest the proceeds on a vessel not worth the repairs, and sink their property in a useless attempt to forward their cargo by the original vessel instead of transhipping it.

There are numerous decisions, commencing with even the earlier cases, where the courts have held that when the vessel would not be worth the repairs put upon her, when she arrived at her port of destination the required necessity exists, compelling the master to sell.

This is one of the cases put by Tindall, C. J., in Somes *vs.* Segure, 4 C. and P., 276, before cited.

In the "Glasgow," 1 Swabey, Adm. Reports, 150, Dr. Lushington, whose forcible language is relied upon by libellants for an extreme necessity as a justification, confirms the validity of a sale, at Savannah, by a master, on the ground of the great cost of repairs, and makes a calculation to show the cost of repairs would be more than the vessel was worth when arrived in England.

The "Australia," 1 Swabey, 484, before cited.

The "Margaret Mitchell," 1 Swabey, 382.

In all these cases the vessels were in port when sold; they were sold by the masters without consulting the owners, and they were afterwards repaired and all but one came to England, where they belonged. Yet the sales were all confirmed by reason of necessity.

If an estimate be made of the cost of repairing the "Amelie," in the imperfect and unsafe manner the claimant, Riviere, repaired her, it will be as follows:

	Gold.
Horton's and carpenter's bills, pages 21, 22	$1,695 31
Repairs already incurred	1,000 00
Master's wages from April 25, for four months, while repairs were making, board, etc., supposing old crew discharged, Riviere making no charge for them in his account . .	500 00
	$3,195 31
Incidental expenses and expense of bottomry, or loss by sale of cargo, at least	$1,000 00
	$4,195 31
Add thirty per cent premium, December 1862, to make the same currency vessel was sold in	1,258 59
Total cost, say	$5,453 90

CONTRA.

Value of vessel, as ascertained by the Marshal's sale . .	$2,138 64
Net freight of cargo not sold, after deducting master's and crews wages for voyage, stores, pilotage, etc., say . .	400 00
Total	$2,538 64

In fact to repair the vessel it would probably have required the sale of all the cargo, and there would have been none to forward.

The whole cargo, see facts agreed, page 13, cost $8,306.67. One quarter of the molasses, sixty hogsheads, had been jettisoned or stoved; eight casks of sugar were partially empty, and sugar damaged by salt water. See 2d survey, page 18.

Nearly one quarter of the cargo was destroyed, and the balance, at Port au Prince, was only of the value of say $6,000, which, if all sold, would not have brought enough to bring the vessel to Boston.

Master has no right to sell the whole of cargo to bring vessel home empty.

3 Kent, 173, p. 236, 11th ed.

There is nothing, however, in the case to show that the temporary repairs, if made properly, would have cost the master of the vessel less than the estimate of 3d survey, viz:

In Spanish dollars	$3,500 00
Add repairs already made	1,000 00
	$4,500 00
This exclusive of cost of bottomry bond or loss by sale say	1,500 00
Total in gold	$6,000 00
" currency	7,800 00

No one would have lent this, or anything like it, on bottomry, if the vessel had been in a place where bottomry could be obtained. And to raise the money, the whole remaining three-quarters of the cargo would have been sacrificed.

Unquestionably the best thing that could have been done for the owners of the cargo has been done, and the one hundred and seventy-nine hogsheads, thirteen barrels, one tierce of molasses forwarded, have been saved by the abandonment of the repairs.

There is no evidence of libellants attempting to procure the funds in the hands of the master. The balance of the money, after paying the lien of the sailors, is undoubtedly in the owner's hands, subject to the claims of the libellants.

2. But supposing (which it is submitted is utterly impossible) that the vessel could have been repaired and forwarded to the advantage of the owners of cargo.

It is submitted that this is then one of those cases where the necessity on the master was so great that he could not have done otherwise than he did. That this is clearly one of those cases where the circumstances justify the master, though he were mistaken.

The famous Lloyd's agents, who represent the English underwriters, the agent of the New York underwriters, persons appointed for the express purpose of having vessels repaired when it is best to do so, three masters of vessels, one of them who has given his deposition, and all appointed by the Dutch Consul, say, after examining the vessel for a whole forenoon, and giving their reasons for it, "that they are oblige to come to the conclusion that it is not possible to make the necessary repairs in this port in a proper manner."

Furthermore, if timber, etc., could be obtained, repairs "could not be made, in our opinion, at less than 3,500 Spanish dollars," and that the time to be employed "for such repairs could not be less than four months," and that these and former repairs would be more than the vessel would be worth after the repairs were effected.

They advise vessel should be sold, and balance of cargo transhipped by another vessel.

In the face of this advice, no master would have dared to repair the vessel. The underwriters' agents are selected for the sole purpose of attending to these matters. From their knowledge of vessels and of costs of repairs, they are the best advisers that can be obtained.

In the "Bonita," 1 Lushington, 263, Dr. L. does not confirm the sale, principally because Lloyd's agent advised repairing, and warned the master against selling.

See also the "Glasgow," 1 Swabey, 147.

In the "Segredo," 1 Spinks, Ec. and Adm. Rep. 36, case of sale *mala fide*. The evidence was the legal surveys advised repairing. Lloyd's agent offered to advance. See page 53 as to Lloyd's agent.

In "Gordon *vs.*" 2 Pick. 264, it is said the only alternative left for master is to follow advice of the surveyors.

II.

A lawful sale of a vessel, by necessity, by the master, is for all concerned, and passes a clean title to the purchaser; the proceeds in the master's hands take the place of the vessel.

The object of the sale is to save something to those who are interested in the vessel, whether they are lien or bottomry holders, mortgagees, insurers, sailors or owners.

When the necessity arises, it is equally for the interest of all these parties to have the remains of the vessel sold, rather than to leave them uselessly to rot away. In this case, it would have been of no service to these libellants to have left the "La Plata" to lie and rot at Port au Prince. The utmost they could have done was, months afterwards, if the vessel were afloat, to sell her for a less sum, etc. The master originally has no power from the owner to sell. The necessity empowers him, and that necessity exists to empower him to sell for the lien holder as well as for the owner. He is in charge of the property for the benefit and security of the lien holder and owner.

If the owner or the lien holder is present, he can interfere and prevent the sale. It is the same with the sailor, whose lien cleaves to the last plank of the ship. He is present, and, if necessary, can interfere, where there are courts, and have the vessel sold; but if he does not, the master sells, and pays him from the proceeds; and this is almost universally done. He cannot be paid from the proceeds of the vessel once, and then again claim his lien on the planks sold. If the sale of the master does not divest the lien, his sale, in the words of the presiding judge of the Circuit Court, would be a mere mockery; no one would dare purchase. No matter of how little value a wreck might be, and how great the expense of the person buying, in building up again the vessel, he would be liable to lose all by the claim of some lien or bottomry holder or mortgagee, who could step in and take away from him what had been wholly recreated at his cost.

In every way it is for the benefit of all to have the master sell for all concerned. If the vessel is broken up, the lien is worthless, as one could never trace the old planks and sails into the hands of the purchasers, while the funds arising from the sale can always be followed.

Necessity, in analogous cases, gives the master the power to sell cargo on board his vessel, though the owners of cargo have nothing to do with his appointment. He has even the right to raise money by hypothecating the whole of the cargo. In cases of injury, where cargo cannot be forwarded, he can sell.

1. Upon examining the authorities, we shall find that it has always been considered that *the sale was for all concerned.*

3 Kent Com. 173. If voyage is broken up, etc., the master may even sell the ship and cargo, "provided it be done in good faith, for the good of all concerned."

Marvin on Wreck, § 14. May sell "in order to save something for the benefit of all concerned."

13 Peters, N. Eng. Ins. Co. *vs.* The "Sarah Ann," on 402.

The master may then act promptly "to save something for the benefit of all concerned." On page 400, he must exercise his best discretion "for the benefit of all concerned."

Patapsco Ins. Co. *vs.* Southgate, 5 Peters, 620, 621.
Schr "Tilton," 5 Mason, 475.
Gordon *vs.* Mass. F. & M. Ins. Co. 2 Pick. 262–4.

Hunter *vs.* Parker, 7 M. & W. 342. Master power to terminate adventure and sell for all concerned.

Miller *vs.* Fletcher, 1 Doug. 235. Mansfield says, I left it to jury if sale by master, of vessel and cargo, was benefit of all concerned.

Robinson *vs.* Clarke, 1 Bing. 445. Sale must be *bona fide*, and for benefit of all concerned.

It will be noticed, in support of the first points taken up, that in many of these cases the vessels, though condemned, were repaired and arrived home, and the sale justified.

2. *There are several cases in which liens have been held to attach to the proceeds of a vessel.*

Shepperd *vs.* Taylor, 5 Peters, 675, was a suit against the *assignees* of the original owners into whose hands had come the proceeds of the restitution of a ship condemned for an illicit voyage. It was held that the lien attached to the thing *and whatever is substituted for it,* page 710, and sailors were paid out of proceeds.

Willard *vs.* Dow, 3 Mason, 168.

Brown et al. *vs.* Lull, 2 Sumner, 443; neutral vessel condemned; restitution in money; held the proceeds represent the ship and freight and are a substitute therefor and subject to their liens.

In the case of the "Catherine," 1 Eng. Law and Eq. 679, where Dr. L. says a sale by master does not discharge liens. He also says "I am not satisfied in this case that there was a necessity for a sale," and therefore it was a mere dictum where he says, in a case of necessity, "I should greatly doubt whether, under such circumstances, a ship could be sold free from lien."

III.

If the opinion of the Court should be, that the purchase was *bona fide* on Riviere's part, but did not divest the liens, then Riviere should be allowed for the value of the repairs he has put upon the vessel, upon the ground of *amelioration.*

This allowance has been made in every case where there seems to have been a proper reason.

Emphatically acknowledged in brig "Sarah Ann," 2 Sumner, 220.

"Aline," 1 W. Rob. 111. Vessel repaired after a collision, on promise of a bottomry bond; held person repairing; right to amount of repairs.

The "Perseverance," 2 Ch. Robinson, 239.

Purchase by neutral of prize ship, illegally condemned, and restored to the owners. One-half of repairs allowed, on the ground the neutral acted in good faith in making the purchase. Only one-half of repairs allowed, on account of wear and tear.

"Nostra De Conceicas," 5 Chas. R. 294.

Amelioration allowed, where the vessel was captured, and sold to the neutral without legal adjudication.

"Fanny and Elmira," Edwards, 118, Sir William Scott refuses amelioration because purchase was not *bona fide,* but recognizes the doctrine.

Pope *v.* Nickerson, 3 Story on page 500.

In no case can the reasons for amelioration be more cogent than in this. It is by Riviere's repairs that the vessel was able to come to Boston. If the vessel had been abandoned to the owners of the cargo, it would have cost them more than Riviere has spent to get the vessel to

Boston, where they could enforce their lien, as he had facilities for repairing her economically.

The fact that Riviere sent the vessel to the port where the owners of cargo were, shows he was acting in good faith, and thought his title good.

C. W. LORING,

Proctor for Claimant and Appellee.

OPINION

OF

MR. JUSTICE CLIFFORD

OF THE CIRCUIT COURT.

CHARLES FITZ, *Libellant and App't*, vs. THE GALIOT "AMELIE."
B. RIVIERE ET AL., *Claimants.*

Complaint of the libellant is, that on the thirteenth day of March, 1862, he shipped on board the "Amelie," then lying in the port of Parimaribo, and called the "Plata," certain merchandise as described in the bills of lading, to be transported to Boston, and there to be delivered to the libellant as alleged in the libel. Allegation also is that the vessel subsequently departed on the voyage, and arrived at the port of destination, but that the master neglected to deliver a large part of the cargo, and has not rendered any satisfactory account of the same or of the proceeds.

Defence of the claimant of the vessel is, that the vessel when she arrived at Port au Prince, was unseaworthy, and utterly unfit and unable to proceed on her voyage, or any voyage to sea, that very extensive and costly repairs were necessary before she could be rendered seaworthy, and that neither the master nor owners had any funds or credit at that port wherewith to procure the repairs to be made, and consequently, that the master, not being able to procure the funds to execute the repairs by bottomry bond, or otherwise, on the twelfth day of June following, sold the vessel at auction, and that he, the claimant, then and there became the purchaser of the same, and is the lawful owner of the vessel.

1. Parties agree that the cargo was received on board the vessel at

Surinam, and that it was to be transported and delivered as alleged by the libellant. Invoice value of the cargo was eight thousand three hundred and six dollars and sixty-seven cents, and the record shows that the master signed bills of lading for the same in the usual form. Agreed statement also shows that the vessel after sailing suffered damage by perils of the sea. Cargo consisted of two hundred and forty-two hogsheads and sixteen barrels of molasses, fifty hogsheads and nine barrels of sugar, and sixteen pieces of old copper. Some of the cargo also was damaged by a peril of the sea, and the parties agree that thirty hogsheads of the molasses were jettisoned for the common safety and that thirty more were intentionally stove in the hold, and that their contents were lost. Proofs also show that the vessel put into Port au Prince for repairs, as alleged, and that she was there twice surveyed and ordered to be repaired. Repairs were made under those orders to the amount of one thousand dollars, when it was ascertained that more extensive repairs were required than were at first deemed necessary. Whereupon, a third survey was called, which resulted in a more thorough examination of the vessel. Sale and purchase of the vessel were made under the recommendation of the third report. Libellant denies the validity of the sale, and the question whether it was rightfully made under the circumstances is the first and principal question in the case. Several other questions of importance and great difficulty were discussed at the bar, but in the view taken of the case, it is not necessary to determine them, or more than one of them, in this investigation.

2. Authority of the master to sell his ship under any circumstances, was denied by some of the continental writers upon maritime law, and by some of the early decisions in the Courts of the parent country. Reason given for the prohibition, was that such authority, if allowed, would tend to encourage fraud. Tremenhere *vs.* Tresillain, 1 Sidf. 425; Johnson *vs.* Shippen, 2 Ld. Raym. 984; Reid *vs.* Darby, 10 East. 143; Abbt. on Shipping, (5th edition) p. 9; Elkins *vs.* East India Company, 1 P. Wms. 392.

Careful scrutiny of those cases, however, will show that the circumstances in most of them were not such as to justify a sale in any view of the law, and the decision in some of them was placed upon that ground. Subsequent cases have clearly established the doctrine even in that country, that the master in a case of extreme necessity, may sell the ship for the benefit of the owners or of all concerned. Hayman *vs.* Moulton, 5 Esp. R. 65. The Fanny, et. al. Edw. Adm. 117; Miller *vs.* Fletcher, Doug. R. 231; Idle *vs.* the Royal Assurance Co. 8 Taun. 755; Freeman *vs.* East India Co. 5 Barn. and Ald. 617; Cannan Meaburn, 1 Bing. 234; Reed *vs.* Bonham, 3 Bro. and Bing. 147; Underwood *vs.* Robertson, 4 Camp. 138. Abbott, in his work on Shipping, says the master posesses every power necessary for the employment and navigation of the ship, and he admits that, in a case of extreme necessity, he may sell the ship, but insists that he is bound, before exercising that authority, to try every other expedient to raise the money. (Abbott on Shipping, p. 9.) But the rule is much better stated by Parke, Baron, in Hunter *vs.* Parker, 7 Mee and Wels. 342, to which special reference is made. He says that the master has by virtue of his employment, not merely those powers which are necessary for the navigation of the ship, and the conduct of the adventure to a safe termination, but also a power when such termination becomes hopeless, and no prospect remains of bringing the vessel home, to do the best for all concerned, and therefore to dispose of the ship for their benefit.

Libellant admits that it is well settled in this country that the master, in a case of necessity may sell his ship, and the admission is a very proper one in this Court, as the point has been at least three times authoritatively decided by the Supreme Court of the United States. The Patapsco Ins. Co. *vs.* Southgate, 5 Pet. p. 620; the "Sarah Ann," 13 Pet. 400; Post et. al. *vs.* Jones, et. al. 19 How. 157. Speaking of the authority of the master to sell his ship, Mr. Justice Thompson said in the first case cited, that there can be no doubt that the injury to the vessel may be so great and the necessity so urgent, as to justify a sale. There must be, says the Court, this implied authority in the master, from the nature of the case. He, from necessity, becomes the agent of both parties, and is bound in good faith to act for the benefit of all concerned, and the underwriter must answer for the consequences, because it is within his contract of indemnity. — All the circumstances must be submitted to the jury, and they must find both the necessity and the good faith of the master in order to justify the sale. Opinion of the Court in the second case was delivered by Mr. Justice Wayne, who does not stop to argue the question of authority, as that had been decided in the preceding case, but proceeds at once to the statement of the conditions under which it must be exercised, in order that the sale may be held valid. Those conditions as there stated, are that the master must act in good faith, exercise his best discretion for the benefit of all concerned, and that the sale can only be made upon the compulsion of a necessity, to be determined in each case by the actual and impending peril to which the vessel is exposed, from which it is probable, in the opinion of persons competent to judge, that the vessel cannot be saved. He admits, however, that the necessity for a sale cannot be denied, when the peril, in the opinion of those capable of forming a judgment, makes a loss probable, although the vessel may in a short time afterwards be got off and put afloat. Mr. Justice Grier delivered the opinion in the third case cited, and he affirms that it cannot be doubted that a master in certain cases of absolute necessity has power to sell both vessel and cargo. Such a necessity may be held to exist, say the Court in that case, where the vessel is *disabled, stranded or sunk*, if it appear that the master had no means, and could raise no funds to repair, so as to prosecute his voyage. Unless the vessel is so disabled that it is rendered unsafe for her to proceed on her voyage, the question as to the necessity of selling her, cannot arise. Nothing short of proof of that fact, will authorize the conclusion that the authority of the master was so enlarged that he became the agent of all concerned, and that he was clothed with power to determine, in their behalf, what should be done for their common interest. Bruce *vs.* Ocean Ins. Co. 40 Me. 493. When the vessel is so disabled that she cannot proceed on her voyage, and the master has no funds to make the necessary repairs to enable her to proceed, and cannot raise any for that purpose, by bottomry, or otherwise, he must determine, in the absence of the owner, what the interest of all concerned required him to do. His authority in the premises, under those circumstances, is not derived from the owner, but is devolved upon him by law, and consequently it is his duty to act according to his best judgment. Sale of the ship is a necessity within the meaning of the commercial law, when under the circumstances indicated, nothing better can be done for the benefit of the owner, or those concerned in the adventure. If the voyage be broken up in the course of it, by ungovernable circumstances, the master, says Chancellor Kent, may sell the ship, provided he do so in good faith, for the good of all concerned, and in a case of supreme necessity, which sweeps all ordinary rules before it. 3 Kent, Com. (9th edition,) p. 237. Neither necessity, nor good faith, is alone sufficient to make such a sale valid, but both must concur, and must be affirmatively shown by the party settling up the sale. The "Henry" 1 B. & H. 470.

My judgment is, said Judge Story, upon the most careful survey of the authorities, as well as upon the general principles of law, that the master has a right to sell the ship in cases of urgent necessity, and I adopt the argument at the bar, that it must be proved that there was a pressing necessity to justify the sale. The schr. "Tilton," 5 Mason, 465. Other courts of the highest respectability have employed the same or similar expressions, but the explanations of Tindal, C. J., in Somes *vs.* Sugrue, 4 C. and P. 282, show to a demonstration that there cannot be, in such a case, either a legal or physical necessity, and consequently that it is only a moral necessity which is required to be shown, in order that the sale may be held to have been justified. Two decisions of Judge Story in this circuit are also to the same effect. Pope *vs.* Nickerson, 3 Story C. C. 465; Robinson *vs.* Com. Ins. Co. 3 Sum. C. C. 226. Whether the necessity actually exists or not, depends upon the circumstances, and so, when carefully examined, are all the well considered cases. Gordon *vs.* Mass. F. & M. Ins. Co. 2 Pick. 249; The "Sarah Ann," 2 Sum. C. C. 215; Hall *vs.* Franklin Ins. Co. 9 Pick. 476; American Ins. Co. *vs.* Center, 4 Wend. p. 51; Pierce *vs.* Ocean Ins. Co. 18 Pick. p. 891.

Different forms of expression are employed by different courts and jurists in describing the degree or intensity of the necessity which is required to justify the sale. Doubts are entertained whether any of the epithets, so employed, express very fully or definitely the precise idea intended to be conveyed. Perhaps it is not possible to devise any rule which will apply to all cases, but it is believed that some approximation may be made in that direction.

3. When the ship is disabled by perils of the sea, and the master has no means of getting the repairs done in the place where the injury occurred, or, if being in a place where the repairs might be made, he has no funds in his possession and cannot, on account of the distance or other sufficient cause communicate with the owner, and is not able to raise the necessary means by bottomry or otherwise to execute the

repairs, or, if the injuries to the ship are so great that the cost of repairing her would be greater than her value after the repairs were made, or, if the ship is disabled so that she cannot proceed and the cost of repairs will amount to more than half her value, reckoning one-third new for old, and the master has no funds and can neither procure any, nor communicate with the owner, and the whole circumstances are such that a prudent owner would decide to break up the voyage, then the master is justified in selling the ship as the best thing that can be done for the interest of all concerned. Such a state of circumstances creates the moral necessity, the urgent necessity, the extreme necessity, the imperious, uncontrollable necessity, described in the decided cases and authorizes the master to sell the ship, if, in his judgment, honestly exercised, the sale will best promote the interest of all concerned. When those conditions, or any class of them, concur, it becomes the duty of the master to decide the question and if he finds that the disaster will be most alleviated and the interests of all will be best served by a sale, then it is his duty to act in the premises, and if he makes the sale *bona fide* as the agent of all concerned, it is valid, and all are bound by his acts. Reference is made by the libellant to certain recent decisions in the Admiralty Court of the parent country in which it is supposed that a more stringent rule is laid down, but a careful examination of the cases will show that they do not warrant any such conclusion. Cases referred to are the following: The "Eliza Cornish," Spinks Ecc. and Adm. R. p. 46. The "Glasgow," 1 Swabey Adm. p. 146. — The "Margaret Mitchell," 1 Swabey Adm. R. 386. The "Australia," 1 Swabey Adm. R. 484. The "Bonita," and Charlotte," 1 Lush. Adm. R. 261.

General rule is, says Dr. Lushington in the case first cited, that the master has no authority to sell the ship, but he adds, that "whatever opinion may have been doubtfully expressed on the subject it appears to me *clear* upon reason and authority looking at what the law now is that in case of necessity he must be invested with that power." Borrowing the language of the opinion in the case of Robertson *vs.* Clark 1 Bing. R. 445, he says, "I agree that it is not sufficient to show that the sale was *bona fide* and for the benefit of all concerned, unless it be also shown that there was an urgent necessity for its being resorted to." Same rule is laid down in the second case, but the same judge says that the "necessity is to be judged by all the circumstances; 1 — The state and condition of the vessel; 2 — The consequences of not proceeding to sell; 3 — The facility of communicating with the owner; 4 — The resources of the master, or the total absence of all resources; 5 — The power and means of the owner to avert a sale." Third case asserts that it is clear from the authorities that though in early times the validity of a sale by a master in a foreign port was doubted, yet now it is decided that he has an implied authority in cases of extreme necessity, and in those only. Judgment was also pronounced in the fourth case by the same learned judge, and in that he states that the necessity which the law contemplates is not an absolute impossibility of getting the vessel repaired, but if the ship cannot be sent upon her voyage without repairs, and if the repairs cannot be done except at so great and so certain a loss that no prudent man would venture to encounter it, that constitutes a case of necessity, and he states the rule in the fifth case in the same language as in the first and borrows it from the same source. Taken as a whole, these cases I think confirm the rule as before explained. Applying that rule to the present case it is quite clear what the result must be. Record shows that the vessel sailed for Boston on the sixteenth of March, 1862, and that she was stanch and in good repair. Full proof is exhibited that she encountered severe storms, was struck by a heavy sea and was so badly crippled, injured and broken, that it was with difficulty that she arrived at Port au Prince. Due protest was made by the master, and she was three times surveyed. First two surveys recommended temporary repairs to enable her to proceed to her port of destination. Surveyors' reports describe in detail, the apparent injuries to the vessel, and specify the temporary repairs required to enable the vessel to proceed. They show, when taken in connection with the statements of the protest, and the parol testimony, that the vessel as examined upon the outside, and with the cargo on board, was very badly stove and crippled, and that she was emphatically disabled from proceeding on the voyage. Second report states that the surveyors recommend that "the vessel be repaired here sufficiently for her to proceed on her voyage to Boston, it being well understood that total and adequate repairs to the damage which the vessel has suffered, are impossible in this port." Temporary repairs were accordingly made, at the cost of one thousand dollars, but the third report shows that upon taking off the side planking to replace the same by new, as was ordered in the second report, the injuries to the vessel were found to be very much greater than was supposed, or could have been known when the prior surveys were made. On the last survey, were three competent masters of vessels, Lloyd's agent, and the agent of the New York and Philadelphia Underwriters. They all agreed that it was not possible to make the necessary repairs in that port, in a proper manner; that even if the necessary materials could be obtained, it would cost, in addition to the one thousand dollars which had been expended, not less than three thousand five hundred dollars Spanish, and that it would take four months to make the repairs, and they also found that the whole cost of repairs would be more than the vessel would be worth, after the repairs were made. Their report, I think, is sustained by the evidence in the case.

4. Sale of the vessel was accordingly made on 12th June, 1862, for the benefit of all concerned and the claimant became the purchaser for the sum of four hundred and seven dollars in gold. Claimant repaired her at a cost of one thousand six hundred and ninety-five dollars and thirty-one cents in gold, and dispatched her to Boston. She was libelled here shortly after her arrival, and was sold under the order of the District Court. Proceeds of sale amounting to the sum of two thousand one hundred and thirty-eight dollars and sixty-four cents remain in the registry of the Court. Libellant claims a lien on the vessel for so much of the cargo as was sacrificed for the common benefit and also for so much of the cargo as has not been delivered. He resists the sale as unauthorized but I am of the opinion that it was clearly justified within the principles already explained.

II. Second proposition of the libellant is that the sale, even if necessary, and valid operated only to pass the title of the owner and that the purchaser took his title subject to the lien of the libellant, but I am of the opinion that the circumstances which create the moral necessity for the sale of the ship in a case like the present have the effect to constitute the master the agent for all concerned and consequently that the title of the purchaser became complete and absolute. The "Tilton" 5 Mason, 475; Miller *vs.* Fletcher, Doug. 232; Idle *vs.* The Royal Exch. Ins. Co. 8 Tawn. 755.

On this point I adopt the views of the respondents, that the lien when the ship was lawfully sold, was transferred to the proceeds which became, by operation of law, the substitute for the ship, in the sense of the admiralty law. Brown *vs.* Lull, 2 Sum. 443; Shepard *vs.* Taylor, 5 Pet. 771. Bear in mind that the sale in this case was a sale from necessity, and I am of the opinion, notwithstanding the doubt expressed in the case of the "Catherine," 1 Eng. L. & Eq. p. 681, that the purchaser took a full title, free of the lien set up by the libellant. Unless such be the law, then the authority conferred to sell in a case of necessity is a mockery, as no prudent man would ever purchase such a title.

Having come to these conclusions it is unnecessary to decide the other questions discussed at the bar. Decree affirmed. Libel dismissed with costs.